

#10 PAGE

PTO/SB/64 (09-04)

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
10646-007-U17

First named inventor: Carlos Neto Mendes

Application No.: 09/028,187

Art Unit: 3721

Filed: 02/23/1998

Examiner: S.F. Gerrity

Title: FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION MACHINE AND CONFIGURATION OF A PERFORMATING FILTERING  
TUBE FOR THE EXTRACTION OF FRUIT JUICES AND CONFIGURATION OF A CONCAVE AND RADIALLY CUT HEMISPHERE  
FOR THE CUTTING AND PRESSING OF FRUIT FOR THE EXTRACTION OF JUICES

Attention: Office of Petitions  
**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (703) 872-9306

**RECEIVED**  
NOV 12 2004  
OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or  
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration  
date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity-fee \$ 685.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
the form of Response under 37 CFR 1.116 (identify type of reply):

☐ has been filed previously on 11/10/2004 MAHNE1 00000031 09028187

☒ is enclosed herewith.

01 FC:2453

685.00 OP

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the  
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to  
complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any  
comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer,  
U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED  
FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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## 3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☒ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ 55.00 for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

 _____ Signature	November 4, 2004 _____ Date
Joseph Fischer _____ Typed or printed name	51,210 _____ Registration Number, if applicable
Beusse, Brownlee, Wolter, Mora & Maire, P.A. _____ Address	(407) 926-7727 _____ Telephone Number
390 North Orange Avenue, Suite 2500 Orlando, FL 32801 _____ Address	

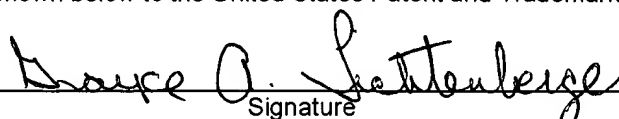
- Enclosures: ☒ Fee Payment
- ☒ Reply with Supplemental Declaration with Schedule A
- ☒ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Appendices A-D supporting Additional Sheets (also containing a Declaration)

## CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

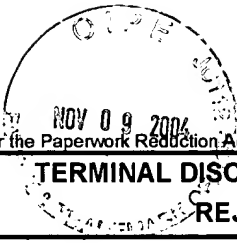
I hereby certify that this correspondence is being:

- ☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

November 4, 2004  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Signature

Grayce A. Lichtenberger  
 \_\_\_\_\_  
 Typed or printed name of person signing certificate

**TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

10646-007-U17

In re Application of: **Carlos Neto Mendes**Application No.: **09/028,187**Filed: **02/23/1998**For: **FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION MACHINE AND CONFIGURATION OF A PERFORMATING FILTERING TUBE FOR THE EXTRACTION OF FRUIT JUICES AND CONFIGURATION OF A CONCAVE AND RADIALLY CUT HEMISPHERE FOR THE CUTTING AND PRESSING OF FRUIT FOR THE EXTRACTION OF JUICES**

The owner\*, Carlos Neto Mendes, of 100% percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,720,218. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is terminally disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

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Check either box 1 or 2 below, if appropriate.

**OFFICE OF PETITIONS**

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

11/10/2004 MAHMED1 00000031 09028187

02 FC:2814

55.00 OP

11/04/2004

Signature

Date

**Joseph Fischer, Reg. No. 51,210**

Typed or printed name

**(407) 926-7727**

Telephone Number

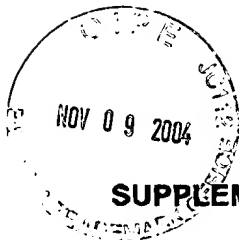
- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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# **SUPPLEMENTAL DECLARATION FOR PATENT APPLICATION**

As the below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below under my name.

I believe that I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled **FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION MACHINE AND CONFIGURATION OF A PERFORMATING FILTERING TUBE FOR THE EXTRACTION OF FRUIT JUICES AND CONFIGURATION OF A CONCAVE AND RADially CUT HEMISPHERE FOR THE CUTTING AND PRESSING OF FRUIT FOR THE EXTRACTION OF JUICES**, the specification of which was submitted and originally filed on February 23, 1998 as Application Serial No. 09/028,187 and for which a Petition for Revival is submitted herewith (Attorney Docket No. 10646-007-U17).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Sec. 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, Sec. 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any relevant foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
Please see the attached Schedule A.			<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

I hereby claim the benefit under Title 35, United States Code, Sec. 120 of any United States application listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in any prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Sec. 112, I acknowledge duty to disclose material information as defined in Title 37, Code of Federal Regulations, Sec. 1.56(a), which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

U.S. Parent Application or PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Status (Patented, Pending, Abandoned)
Please see the attached Schedule A.		

*AW*



Please address all correspondence regarding this application to:


Name	Joseph Fischer				
Address	Beusse, Brownlee, Wolter, Mora & Maire, P.A.				
Address	390 North Orange Avenue, Suite 2500				
City	Orlando	State	Florida	Zip	32801
Country	US	Telephone	(407) 926-7727	Fax	(407) 926-7720

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Sec. 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

INVENTOR:

CARLOS MENDES NETO

INVENTOR'S SIGNATURE

  
NOVEMBER 03, 2004

DATE:

RESIDENCE:

Araraquara, SP, Brazil

COUNTRY OF CITIZENSHIP: USA (since 1999)

POST OFFICE ADDRESS: Rua Voluntários de Pátria 1766 - apt. 101  
CEP 14-801-320, Araraquara, SP, Brazil

SCHEDULE A  
TO SUPPLEMENTAL DECLARATION FOR U.S. PATENT APPLICATION  
SERIAL NO. 09/028,187

The above-identified U.S. Patent application is a continuation-in-part of U.S. Serial No. 08/884,529 filed June 27, 1997, which is a continuation-in-part of U.S. Serial No. 08/763,679 filed December 11, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7502994-4 filed December 15, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/759,727 filed December 6, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7502786-0 filed December 8, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/759,722 (now U.S. Pat. No. 5,720,219) filed December 6, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7502785-2 filed December 8, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/759,723 filed December 6, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7502784-4 filed December 8, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/759,724 filed December 6, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MI-5501976-5 filed December 8, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,622 filed July 29, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application Nos. MU-7501563-3, PI-9503109-0 and MI-5501053-9 all filed August 7, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,623 filed July 29, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. PI-9503518-4 filed August 1, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,624 filed July 29, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7501781-4 filed August 1, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,625 filed July 29, 1996 (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7501780-6 filed August 1, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,626 (now U.S. Pat. No. 5,802,964) filed July 29, 1996, (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MU-7501779-2 filed August 1, 1995); and which also is a continuation-in-part of U.S. Serial No. 08/681,658 filed July 29, 1996, (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No.



MI-5501199-3 filed August 1, 1995 (renumbered to DI-5701955-0)); and which also is a continuation-in-part of U.S. Serial No. 08/681,627 (now U.S. Pat. No. 5,720,218) filed July 29, 1996, (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MI-5501198-5 filed August 1, 1995 (renumbered to MU-7800719-4)); and which also is a continuation-in-part of U.S. Serial No. 08/681,628 filed July 29, 1996, (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. MI-5501197-7 filed August 1, 1995 (renumbered to DI-5802144-2)); and which also is a continuation-in-part of U.S. Serial No. 08/647,066 (now U.S. Pat. No. 5,655,441) filed May 9, 1996, (which claims priority, under 35 U.S. Code § 119 based on Brazilian Application No. PI-9502244-9 filed June 19, 1995).

END OF SCHEDULE A

A handwritten signature in cursive script, likely of the attorney or agent representing the applicant, is located to the right of the "END OF SCHEDULE A" text.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: Carlos Neto Mendes

Group Art Unit: 3721

Applicant: Carlos Neto Mendes

Serial No.: 09/028,187

Atty. Dkt.: M-95-3195-U. (old)  
10646-007-U17 (new)  
Internal Code: U.17

Filed: 02/23/1998

Title: FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION MACHINE AND  
CONFIGURATION OF A PERFORATING FILTERING TUBE FOR THE EXTRACTION OF  
FRUIT JUICES AND CONFIGURATION OF A CONCAVE AND RADially CUT  
HEMISPHERE FOR THE CUTTING AND PRESSING OF FRUIT FOR THE EXTRACTION  
OF JUICES

PAPER PROVIDING  
ADDITIONAL SHEETS CONTAINING STATEMENTS ESTABLISHING  
UNINTENTIONAL DELAY,  
TO ACCOMPANY PETITION UNDER 37 CFR 1.137(b) FOR REVIVAL OF AN  
APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Commissioner for Patents:

Part I. Introduction

This Paper with its Appendices accompanies Applicant's Petition to Revive the above-referenced unintentionally abandoned patent application. That Petition is filed in accordance with 37 CFR 1.137(b).

At the outset, Applicant informs the Commissioner that Applicant, Mr. Carlos Mendes, was deceived by the Applicant's former attorney of record, Mr. George Bode, former Registration number 30,028. As a result of Mr. Bode's deceit, which included Mr. Bode's failure to communicate to the Applicant the true status of this and other applications, the Applicant did not realize the true status of the present application for a sustained period of time.

During the period from the abandonment of the present application (for which a Notice of Abandonment was mailed 10/29/1999) to August 2002, the Applicant did not know of the unintentional abandonment of the present application. Mr. Mendes regularly queried Mr. Bode about the status of pending applications. Correspondence from Mr. Bode during this period reinforced Mr. Mendes' belief that the present application was properly in force as required in a chain of co-pending patent applications. In August 2002 an official from the Patent Office informed Mr. Mendes that a number of his applications were abandoned. Following this, a period of deception of Mr. Mendes by Mr. Bode ensued, and this deception continued through June 2004 when Mr. Mendes transferred his representation to the present law firm. From June 2004 to the present filing of the Petition to Revive, the present attorney and Mr. Mendes operated with diligence to gather information regarding the true status of the present application and to prepare this Petition to Revive.

Part II of this Paper refers to evidence (provided in Appendices) and provides analysis to support the conclusion that Mr. Bode deceived the Applicant after having erred, and that his deception included concealing this and subsequent errors. As such, any mistakes (collectively including his errors, and/or omissions) on the part of the former attorney, Mr. Bode, should not be imputed to nor bind the Applicant. That is, when an attorney intentionally conceals a mistake he made, thereby depriving the client of a viable opportunity to cure the consequences of the mistake, the attorney's mistake is not attributed to the client. (See Appendix A-1, Decision, Paper 13 of the Office of Petitions, regarding Anthony D. Cipollone, 2001, footnote 22, and A-2, *In re Application of Robert Lonardo*, 1990 Commr. Pat. 18, 17 USPQ2d 1455 (copies provided in Appendix A)).

The deceit by Mr. Bode follows a pattern of behavior that Mr. Bode was found to exhibit according to the "Final Decision Under 37 C.F.R. § 10.156," Proceeding No. D02-14. This Final Decision resulted in Mr. Bode's suspension from practice as a registered patent attorney (See Appendix A-3).

The delay in filing the Petition to Revive exceeds one year from the date of abandonment. Applicant provides in Part III of this Paper a showing as to how the delay was unintentional between the date the Applicant was first notified by the Patent Office that the application was abandoned and the date of filing the Petition to Revive.

Given the relatively long chain of co-pending patent applications, of which the present application is properly a member, a partial list of these applications, providing the attorney docket number, internal coding for these (i.e., U-1, U-2, etc.), serial numbers and filing dates is provided as document B-0 in Appendix B.

## Part II: Evidence and Analysis Showing Mr. Bode Deceived Applicant

Applicant respectfully asserts that the mistakes (collectively including his errors, and/or omissions), of his former attorney, Mr. George Bode, should not be imputed to the Applicant in view of Mr. Bode's ongoing concealment of his mistakes and his pervasive deceit as to these mistakes and supposed corrective action being taken. Thus, even if Mr. Bode knew of the abandonment of the present application and did not promptly act to revive it, this should not be imputed to the Applicant under the present circumstances.

In the alternative (or combination with the above), Applicant respectfully asserts that the mistakes, acts and omissions of Mr. Bode rise to a level of more than ordinary neglect or gross negligence, and therefore should not be charged to the Applicant.

*In re Application of Robert Lonardo*, 1990 Commr. Pat. 18, 17 USPQ2d 1455 has facts analogous to the present facts, and is provided in Appendix A-2. In *In re Lonardo*, a registered patent attorney was found to have deceived his client, a patent applicant, and the record showed this deceit included a failure to adequately communicate the true status of an abandoned application that was in a series of applications. The applicant's efforts to communicate with his attorney were found to be not less than diligent.

For the period up to August 2002, it is unclear whether correspondence from Mr. Bode shows mistake or deceit. Particularly, letters (See Appendix B, documents B-37 to B-44) consistently indicate that the present application was considered to be properly in the chain of co-pending patent applications through to the latest application noted in the letters. It is possible that Mr. Bode was not aware of the abandonment of the present application before filing the next-filed applications on August 20, 1999. Regardless of whether this was mistake or deceit for this period, the fact of clear deceit in a subsequent period requires that any failure to be diligent by Mr. Bode is not imputed to the Applicant.

As to the period following August 2002, the following documents (copies in Appendix B, numbered as below, except for item 8, which is in Appendix C) provide evidence of Mr. Bode's clear deceit of the Applicant as to the status of this or other applications (i.e., whether pending or whether revival has proceeded). These are arranged in chronological order except for the item 8, the Declaration of the Applicant, Mr. Carlos Mendes, which is Appendix C.

- B-1. November 5, 2002 e-mail from Mr. Bode to Mr. Mendes: "I am completing the necessary petitions and will have copies of all documents to you ASAP."  
(Comment: There is no record of petitions of any kind being filed by Mr. Bode during this period for Mr. Mendes' applications, and no copies were received by Mr. Mendes.)
- B-2. November 26, 2002 e-mail from Mr. Bode to Mr. Mendes: "I am working on the InterCitrus intellectual property portfolios." (Comments: First, this e-mail from Mr. Bode followed Mr. Mendes' letter of November 22, 2002 regarding "Lack of Service," (see advance copy e-mail, B-18). Second, and critically as to evidence of Mr. Bode's deceit, nothing exists in this or other of applicant's patent application files documenting work completed and submitted to the USPTO by Mr. Bode during this period. That is, available hard copy files and the PAIR File Histories indicate that no paper was filed by Mr. Bode for any of Mr. Mendes' patent applications on or after November 26, 2002.)
- B-3. March 7, 2003 e-mail from Mr. Bode to Mr. Mendes: Mr. Mendes wrote in an e-mail dated 02/25/2003, "I have not heard from you in a while, nor have I received any materials related to your most recent filings of corrective actions." In a March 7, 2003 e-mail Mr. Bode replied, "I am in New Orleans until March 11, 2003. I will contact you with details by then." (Comment: Mr. Bode failed to provide such details as promised, likely because any details would have shown he had taken no action. Accordingly, this is a deceptive reply to another request for substantiation of corrective actions promised by Mr. Bode to Mr. Mendes.)
- B-4. April 1, 2003 e-mail from Mr. Bode stating "I will have a reply shortly."  
(Comment: In the context of the pattern of communications, this represents another deceptive promise, as no relevant documents or forthright reply was ever provided by Mr. Bode.)

- B-5. Meeting notes of Mr. Mendes from an October 21, 2003 meeting between Mr. Bode and Mr. Mendes, Mr. Bode (“GAB” in the notes) indicated he will file a Petition to Make Special” for U.20 (which is U.S. application serial no. 09/641,790). (Comment: A review of the file (or information from a Status Request) would have shown that this application had gone abandoned. Thus it can be reasonably inferred that when Mr. Bode made this statement of plan of action to Mr. Mendes, Mr. Bode knew that U.S. application serial no. 09/641,790 had gone abandoned, and acted to deceive Mr. Mendes by making reference to a Petition to Make Special, which would not have relevance to an abandoned application (for which Mr. Bode should have filed a Petition to Revive based on past promises and assurance, but which the record shows he did not)).
- B-6. January 18, 2004 e-mail from Mr. Bode stating, “I have made another status inquiry of U.20 and the other pending patents.” (Comment: There is no record at the USPTO of any status inquiry for the U.20 application (ser. No. 09/641,790) nor any other patents, based on review of the PAIR file histories of this and later-filed patent applications. This is strong evidence of Mr. Bode’s ongoing deception of Mr. Mendes, and is particularly indicative of Mr. Bode’s efforts to hide his mistakes and omissions.)
- B-7. Meeting notes of Mr. Mendes from a May 26, 2004 meeting with Mr. Bode. Mr. Bode indicated to Mr. Mendes that there was no news to report regarding U.20 (ser. no. 09/641,790). (Comment: The latest item in the file of ser. No. 09/641,790 received from Mr. Bode by the present attorney was a non-final Office action mailed 07/03/2002. As discussed below, that Office action indicated a problem with the chain of priority between the present application and two later-filed applications, which by May 2004 should have been apparent to Mr. Bode. The PAIR File History record shows no response filed after this, nor a Status Inquiry, nor a Petition to Revive. This provides evidence Mr. Bode’s ongoing deception of Mr. Mendes as late as May 2004.)
8. Additional evidence of Mr. Bode’s pattern of deceit is found in Mr. Mendes’ Declaration (Appendix C), which shows that Mr. Bode repeatedly assured Mr. Mendes that Mr. Bode had taken appropriate corrective action. Mr. Bode also



used as an excuse for the delays an assertion that the Patent Office was far behind in processing patent applications.

In *In re Lonardo*, Lonardo's attempts to obtain information during his attorney's deceitful assurances were found to prove that Mr. Lonardo was no less than diligent, and that the attorney misled Lonardo. Similarly, here the facts favor a finding that Mr. Mendes was no less than diligent, and the acts and omissions of Mr. Bode should not be impugned to the Applicant. More particularly, the facts in this case strongly support the conclusion that Mr. Bode intentionally concealed mistakes he made in prosecuting the present application by 1) not keeping it pending until at least the August 20, 1999 filing date of the next applications in the series, and by 2) not filing for a Petition to Revive upon learning of this error. Mr. Bode continued the deception by assuring the Applicant that corrective action had been taken, by promising supporting documents, and by not delivering the latter (See Part III, below). These facts support the same conclusion found in *In re Lonardo*, that the Applicant was not less than diligent for the relevant time period, i.e., from 06/30/1999 through at least 05/26/2004. The diligence during the period from this last date to the filing of the Petition to Revive is explained in a following section, Part III (B).

### Part III: Provision of required information<sup>1</sup>

#### (A) Information as to when the Applicant first (and subsequently) became aware of the abandonment of the application.

The Applicant, Mr. Carlos Mendes, was informed of the abandonment of the present application during a telephone discussion with Mr. Edward Polk of the USPTO Office of the Solicitor (See B-8 & B-9). The B-8 notes and the Declaration (Appendix C) indicate that in August 2002 Mr. Polk first informed the Applicant that the present application, as well as other applications, had gone abandoned. Thereafter Mr. Mendes spoke with and otherwise corresponded with Mr. Bode. (See Declaration, Appendix C). Given the nature of the series of continuation-in-part applications that were being filed on behalf of Mr. Mendes by Mr. Bode, Mr. Mendes was aware that many applications had been consolidated into later-filed

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<sup>1</sup> Paragraph (B) in the MPEP, page 700-185, of the rev. 2 May 2004 edition, requires a showing of the cause of delay between the date that the applicant (or his Representative) was first notified that the application was abandoned and the date a Petition under 37 C.F.R. 1.137(b) was filed, and how such delay was unintentional.

applications, with the earlier-filed applications being abandoned. Thus, Mr. Mendes believed that some applications that Mr. Polk had indicated had gone abandoned had become abandoned only after the filing of a later co-pending application that claimed priority to it. Mr. Bode assured Mr. Mendes that the abandoned applications that needed to be revived to support the priority chain would be revived. (See Declaration, Appendix C).

Appendix B also provides copies of e-mail correspondence, mail, and teleconference and meeting notes that document that, beginning in August 2002, Mr. Mendes repeatedly asked for Mr. Bode to review the status of applications and provide assurance that all matters were under control and rectified as needed (See B-10 to B-36). In a number of these communications he also requested copies of supporting documentation as to the revival efforts promised by Mr. Bode. In other correspondence he communicated to arrange in person meetings with Mr. Bode in Florida. Collectively, these documents provide evidence of Mr. Mendes' diligence.

As indicated in the Declaration, Appendix C, when Mr. Mendes first communicated to Mr. Bode, Mr. Bode indicated that he believed what Mr. Polk had stated must be a mistake. Later, at meetings in September 2002, Mr. Bode stated that some errors had been made and that perhaps some applications went unintentionally abandoned. Once the unintentional abandonment of certain applications was confirmed, Mr. Bode assured Mr. Mendes that Mr. Bode would correct whatever problems had arisen, including by reviving applications as needed. At meetings on December 11 and 19, 2002, Mr. Bode continued to provide reassurance to Mr. Mendes that Mr. Bode had taken necessary action to revive needed applications. In subsequent meetings, Mr. Bode continued to assure Mr. Mendes that all corrective actions that needed to be taken had been taken, so that all subject matter that they wanted to be pending was pending in patent application serial numbers 09/641,790 and 09/835,919 (U.20-CIP and U.21-CIP, by internal designation). This also was supported by correspondence after applications filed later (See B-37 to B-44). The result of this ongoing deception was to delay Mr. Mendes from learning of the true status of his patent applications. Also, each time, during late 2002 through 2003, when Mr. Mendes reached a point of seeking other counsel, Mr. Bode was able to reassure Mr. Mendes that, despite delays and lack of documentation, Mr. Bode had taken necessary corrective action and what was required was to wait for a response from the Patent Office.

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Applicant believes these requirements are met in A and B of this Part. If further information is required, Applicant requests the opportunity to provide this as supplemental information to this Paper.

At a minimum, based on a reading of the Office action mailed 07/03/2002 for serial number 09/641,790 (Appendix D), and analysis of the file history of the present file, Mr. Bode must have realized that the present application had gone abandoned improperly and unintentionally, prior to the filing date of the next-filed applications in the series, 09/377,936 and 09/377,937, both filed 08/20/1999 (so that the present application and all previous applications could not be claimed in a priority claim), and should have filed a Petition to Revive it in order to fulfill his responsibility to the present Applicant (also see B-45). The record shows no evidence that he so acted to rectify this improper abandonment that was unintentional as to Mr. Mendes.

In summary, as to when abandonment of the present application was known by the parties:

1. Mr. Bode knew should have known that the application went abandoned on 09/30/1999, after failing to have responded to the 03/30/1999 Final office action and after failing to pay for an extension of time. However, because that Final office action was not in the file obtained from Mr. Bode, this cannot be stated with certainty. Thereafter, Mr. Bode knew of the abandonment of this and other applications when Mr. Mendes informed him of such via an e-mail dated August 27, 2002 (B-10) (as well as in subsequent e-mails).
2. Mr. Mendes first was informed of the abandonment of this application from Mr. Edward Polk of the USPTO Office of Solicitor in August 2002. This raised a concern by Mr. Mendes as to whether this application needed to be revived to maintain the desired co-pendency of applications (as opposed to having been abandoned after a subsequent co-pending application had been filed). Thereafter there was a period of deception by Mr. Bode, during the major, latter part of which Mr. Bode informed Mr. Mendes that the revival of applications that needed to be revived was in process, including the present application. Evidence that Mr. Bode's deception of Mr. Mendes continued through May 2004 is provided in Part II, above. After changing representation to the present attorney, Mr. Mendes was first informed, on July 16, 2004, that this patent application was still abandoned, apparently before the filing of later-filed applications in the series. (See Appendix E-1, Page 1 of Summary provided July 16, 2004 to Mr. Mendes). Mr. Mendes first definitively knew

that the application had gone unintentionally and improperly abandoned (i.e., before the filing of the next application in the series) in August 2004 after being so informed by the present attorney, who had by then obtained confirmation from the PAIR system.

3. The undersigned attorney for Applicant definitively learned of the abandonment of the present application on August 8, 2004, via secure PAIR after obtaining Power of Attorney for this application (see E-2). Prior telephone conversations with Ms. M. Watts, Technical Support at the USPTO, had provided sufficient information for the undersigned attorney to indicate to Mr. Mendes on July 16, 2004 that this application apparently was abandoned before the filing of subsequent applications in the series, and that there was no record of any revival efforts by Mr. Bode.

(B) A showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the Applicant.

Generally, this showing is complicated by the facts that Mr. Mendes 1) up to around August 2002 received information from Mr. Bode that indicated Mr. Bode was properly handling the pending patent applications, and 2) after August 2002 repeatedly relied on Mr. Bode's deceitful assertions that Mr. Bode was taking actions to correct problems, including reviving the present application if needed, or was investigating the status of the applications, including the present application. In fact, during both periods Mr. Bode failed to properly communicate the true status of this and other patent applications to Mr. Mendes, to Mr. Mendes' ultimate detriment. Mr. Bode's failure to properly communicate the true status of the present application, particularly the clearly deceitful communications in the latter period, delayed Mr. Mendes' discovery of the unintentionally abandoned status of the present application despite Mr. Mendes' exercise of due care and diligence.

First, it is noted that between 1995 and 2002, Mr. Mendes had an ongoing client/attorney relationship with Mr. Bode. During this period Mr. Bode was able to bring to issue four patents for Mr. Mendes. Thus, Mr. Mendes had a well-founded, experience-based confidence in Mr. Bode as his patent attorney. Based on this confidence, Mr. Mendes had no reason to doubt that the present application had remained pending through the filing of the next-filed applications on

08/20/1999, as was indicated in correspondence from Mr. Bode between August 20, 1999 and May 14, 2001 (B-37 to B-44). All of these letters indicate a continuous chain of co-pending applications that includes the present application. Once the later-filed applications were pending, and believed to contain relevant subject matter from previous applications, including the present application, Mr. Mendes' concern focused on these later-filed pending applications.

The August 2002 communication with Mr. Polk alerted Mr. Mendes to possible problems regarding unintentionally abandoned applications. Between August 2002 and mid-2004, Mr. Mendes made repeated efforts to obtain from Mr. Bode confirmation and documentation that this and other applications were being revived as needed (See B-10 to B-36). Mr. Mendes exercised diligence in making these inquiries. During this period he continued to request information from Mr. Bode (e.g., see April 20, 2004 e-mail, B-35). After selection in June 2004 of the present law firm to take over patent and trademark work from Mr. Bode, on June 28, 2004, the present attorney obtained Mr. Bode's hard copy files for the present application and others from Mr. Bode (see Appendix E-3, the June 28, 2004 e-mail from Mr. David Maire, of the present firm, to Mr. Carlos Mendes).

After studying the files obtained from Mr. Bode for a relatively large number of U.S. and foreign patent applications, and after filing Change in Power of Attorney forms for the relevant U.S. applications, the present attorney was able to confirm, on August 8, 2004, that the present application had in fact gone abandoned prior to the August 20, 1999 filing of two subsequent related applications. This was first suspected upon reviewing the Office action mailed 07/03/2002 in a subsequent application, serial number 09/641,790, filed 8/18/2000, in which the Examiner indicated a break in the chain of priority and required correction to cancel priority claims to the earlier references unless corrective action was taken (see Appendix D).

Based on the information from private PAIR on August 8, 2004, it was determined that the application went abandoned unintentionally and improperly (i.e., before the filing of the next applications in the series on August 20, 1999). As evidenced in priority claims of later-filed applications (as demonstrated in letters B-37 to B-44), this application was meant to have remained pending until the filing of a later application in order to preserve the chain of priority. Specifically, the last Office action was mailed 3/30/1999 and no response to this Office action by Mr. Bode was ever entered in the File History. When Mr. Bode filed two applications on 8/20/1999 and claimed priority to the chain of previously filed applications including the present

application, he did not (according to USPTO records) file a Request for Extension of Time to keep the present application pending through 8/20/1999. Thus, the present application went abandoned, unintentionally as to Mr. Mendes, on 6/30/1999, slightly less than two months prior to the filing date of the next later-filed applications in the series.

As indicated above, there were a large number of U.S. patent applications including the present application forming a long chain of priority (See B-0). As to the period between September 30, 1999 and August 2002, Mr. Mendes believed that the present application was pending at least until the filing date of a later-filed continuation-in-part claiming priority to it. This belief was supported by correspondence from Mr. Bode reporting that the chain of priority back to June 12, 1995 was intact (See, for instance, letters designated B-37 to B-44). Thus, Mr. Mendes first definitively knew that the application had gone unintentionally and improperly abandoned (i.e., before the filing of the next application in the series) in August 2004 after being so informed by the present attorney.

As to the delay between August 8, 2004, and the filing date of this Petition to Revive, during this time information was being gathered by the undersigned attorney to prepare this Petition. Part of this information gathering included first filing a Freedom of Information Act ("FOIA") request for documents related to disciplinary action against Mr. Bode (See Appendix E-4, providing a chain of FOIA correspondence). This FOIA Request, submitted by e-mail on August 4, 2004, was refused based on the pending public availability of at least some of this information (See Appendix E-5). Then, on or around September 15, 2004, "Final Decision Under 37 C.F.R. § 10.156," Proceeding No. D02-14, became available publicly online at the USPTO website. This is provided herein, as Appendix A, as character evidence supportive of Mr. Bode's behavior alleged herein. A second FOIA Request was filed September 30, 2004, requesting documents not made public, including the Initial Decision (See Appendix E-6, providing a chain of FOIA correspondence). Applicant is filing this Petition before receipt of the information requested in this second FOIA Request, and will supplement this Petition with relevant information if such is obtained through the second FOIA Request.

#### Part IV Concluding Statements

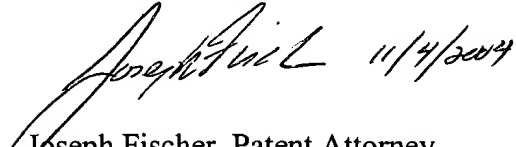
In conclusion, at least through August 2002, Mr. Mendes had a good faith belief that his registered and experienced patent attorney, Mr. George Bode, who had provided what he considered good legal services since 1995, was taking the proper steps to assure continuity between patent applications as Mr. Bode was filing a series of continuation-in-part applications that included the present application. But for Mr. Bode not timely filing a response and/or a Request for Extension of Time after the 3/30/1999 Office action of the present application, the continuity in this series through the present application would have been maintained. Mr. Bode's mistakes (collectively including his errors, and/or omissions), and the multiple deceits and intentional concealment by Mr. Bode of his mistakes, during the period from June 30, 1999 through May 2004, should not be imputed to Mr. Mendes. The Applicant, Mr. Mendes, was deprived of an earlier opportunity to cure the mistakes of Mr. Bode due to Mr. Bode's deceit, including concealment of his mistakes. Mr. Bode's mistakes as to the present application should not be charged to the Applicant when so followed by a period of concealment of the mistakes. The Applicant was diligent during all relevant time periods, and the Petition to Revive should be granted because the abandonment was unintentional as to the Applicant.

Applying the analysis of *In re Lonardo* to analogous facts in the present application, the Commissioner should find that for the period of deception by Mr. Bode the Applicant has established unintentional delay under 37 C.F.R. 1.137(b). Combining this with Mr. Mendes' earlier diligence when he relied on communications from Mr. Bode and was unaware of the unintentional abandonment, and with the later diligence from June 2004 to the present filing of the Petition to Revive, the Commissioner should find, as asserted in the Petition, that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional.

The Applicant respectfully requests the opportunity to supplement this Paper with additional information if needed by the Commissioner to find in Applicant's favor. As appropriate, Attorney for Applicant may be contacted at the telephone number below to request such information.

**Also, as appropriate, the undersigned is willing to participate in telephonic or in in-person interviews with the Office of Petitions to clarify and/or resolve any matters relevant to revival of this application.**

Respectfully submitted,

 11/4/2009  
Joseph Fischer, Patent Attorney  
Registration No. 51,210

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# APPENDIX A



JJQJr.:10-00

Paper 13

ANTHONY D. CIPOLLONE  
ONE ESSEX ST.  
HACKENSACK, NJ 07601

COPY MAILED

JUN 01 2001

In re Patent No. 5,185,542  
Issue Date: 9 February, 1993  
Application No. 07/750,941  
Filed: 28 August, 1991  
Attorney Docket No. 90081OFFICE OF PETITIONS  
A/C PATENTS  
ON PETITION

This is a decision on the renewed petition filed 6 February, 2001, under 37 C.F.R. §1.378,<sup>1</sup> subsection (b), to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

The original petition was filed 29 September, 2000, and dismissed on 6 December, 2000 (the December 2000 Decision), under 37 C.F.R. §1.378, subsection (b), for failure to make a satisfactory showing that the delay was unavoidable.

At that time Petitioner was informed that this would be the only opportunity for reconsideration.<sup>2</sup>

Moreover, Petitioner also was informed that he was to provide any and all supporting documentation with his renewed petition, if filed.<sup>3</sup>

This petition followed. The supporting documentation filed with the renewed petition is described, infra.

### I. JURISDICTION

The patent issued on 9 February, 1993. The grace period for paying the first maintenance fee expired at midnight on 9 February, 1997. Therefore, the original

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<sup>1</sup> The regulations at 37 C.F.R. §1.378 provide in pertinent part:

- ... .
- (a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in the payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by §1.20(l) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).
- (b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:
- (1) The required maintenance fee set forth in §1.20(e) through (g);
  - (2) The surcharge set forth in §1.20(l)(1); and
  - (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.
- (c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in §1.362(e) and must include:
- (1) The required maintenance fee set forth in §1.20(e) through (g);
  - (2) The surcharge set forth in §1.20(l)(1); and
  - (3) A statement that the delay in payment of the maintenance fee was unintentional. (Emphasis added.)
- ... .

<sup>2</sup> December 2000 Decision, at page 1

<sup>3</sup> December 2000 Decision, at page 3.

petition, filed 29 September, 2000, was not timely filed within twenty-four months after the six-month grace period provided in 37 C.F.R. §1.362(e). Thus, Petitioner's only avenue for relief is under 37 C.F.R. §1.378(b).

The Commissioner may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable," 35 U.S.C. 41(c)(1), and a petition can be filed under 37 C.F.R. §1.378(b).

## II. STATUTES, REGULATIONS, AND ANALYSIS

Under the applicable provisions of 35 U.S.C. §41(b) and (c):

the Commissioner shall charge fees for maintaining in force all patents filed on or after 12 December, 1980, at the 3-year-6-month, 7-year-6-month, and 11-year-6-month intervals; and

unless payment of the applicable maintenance fee is received in the PTO on or before the date the fee is due or within a grace period of six months thereafter when the grace-period surcharge is paid with maintenance fee, the patent will expire as of the end of the grace period; except that

the Commissioner may accept the payment of any maintenance fee required by the statute if the payment is made:

--within 24 months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional;<sup>4</sup> or

--at any time after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable.

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. 133 because 35 U.S.C. 41(c)(1) uses the identical language, i.e., "unavoidable" delay.<sup>5</sup>

In determining if a delay was unavoidable, decisions on reviving abandoned applications have adopted the standard of the reasonably prudent person acting in their most important business matters.<sup>6</sup>

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."<sup>7</sup>

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<sup>4</sup> The burden is less onerous to show unintentional delay under the provisions of 37 C.F.R. §1.378(c), the application of that portion of the regulation is limited to those cases in which the 24-month time limitation is satisfied. The payment was not tendered herein within that period.

<sup>5</sup> Rav v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)).

<sup>6</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Hendeh, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

<sup>7</sup> Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

Finally, a petition to revive an application or patent as unavoidably abandoned or expired cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.<sup>8</sup>

The regulations at 37 C.F.R. §1.378(b)(3) require a showing that:

- "the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely," and
- the showing must "enumerate the steps taken to ensure timely payment of the maintenance fee" as well as the reasons why payment was not timely made.

This showing should include, but is not limited to, docket records, tickler reports, and file jacket entries for this application, and documents regarding the alleged cause of the delay and copies of any documents referred to in petitioner's statement as to the cause of the unavoidable delay are required.

All the causes which contributed to the failure to timely pay the maintenance fee must be presented and supported with appropriate evidence.

Further, petitioner should identify the party(ies) responsible for making the payment: A showing must be made (with supporting documents) outlining the efforts made to ensure timely payment of the maintenance fee--including scheduling and calendaring information, appointment of an individual with the authority and responsibility to pay the fee, and detailing of the causes for a failure in that process.

Petitioner must "provide any *direct evidence* proving exactly"<sup>10</sup> what records and systems were in place to satisfy the showing required under 37 C.F.R. §1.378(b).

### III. BACKGROUND

#### Persons/Offices

- Anthony D. Cipollone: Petitioner/Counsel;
- Unidentified Secretary;
- Unidentified Physician (the photocopy of the billing indicates that the physician may have been a Valavan Subramanian, MD);

#### Payment Windows

After the issue of the patent on 9 February, 1993, the windows for payment of the first maintenance fee opened and closed as follows:

the first window opened on 9 February, 1996, and closed at midnight on 9

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<sup>8</sup> Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

<sup>9</sup> The showing must also enumerate the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. The showing can be verified by using the attached petition form which includes a declaration according to 37 C.F.R. §1.68. Statements from all persons who contributed to the delay are also required.

<sup>10</sup> See also: Krahn v. Commissioner, 15 USPQ2d 1823 (E.D. Va. 1990) (Emphasis supplied).

August, 1996, for payment without surcharge;

- the second opened on 10 August, 1996, and closed at midnight on 9 February, 1997, for payment with surcharge under 37 C.F.R. §1.20(h);
- the third opened on 10 February, 1997, and closed at midnight on 9 February, 1999, for payment as unintentionally delayed under 37 C.F.R. §1.20(i)(2); and
- the fourth also opened on 10 February, 1997, for payment as unavoidably delayed under 37 C.F.R. §1.20(i)(1).

As noted above, payment of the first maintenance fee was not tendered until the filing of the original petition on 29 September, 2000.

#### Showing

Attached to the renewed petition are a statement<sup>11</sup> and three (3) one- (1-) page documents:

Exhibit "A" purports to be a page from Petitioner's office calendar for Friday, 7 February, 1997, containing four (4) hand-written notations. Three (3) of the items appear to be unrelated and/or indecipherable, and one states:

"Maintenance Fee Pat. No. 5,185,582" (sic);

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<sup>11</sup> The undated statement is as follows:

#### RENEWAL PETITION UNDER 37 C.F.R. [§] 1.378

I am making this request; since, I believe reasonable care was taken to ensure that the Maintenance Fee would be timely paid.

Attached hereto, (as Exhibits "A" and "B") are (2) two systems which I use to ensure my Maintenance Fees are paid. There is, my diary Sheet for [7 February, 1997,] and my Computer List of Actions to be Taken. In both these cases the system was not followed.

In August of 1994, I relocated my Office from Saddle Brook, New Jersey[,] to Englewood Cliffs, New Jersey. Further I have since had another address change of address (sic) to One Essex Street, Hackensack, New Jersey[,] in June 1997. during that period of time, when the office relocated my file was misplaced and my secretary, who had been entrusted with the follow-up of this matter, suddenly left in 1996.

I have spent the last several months trying to locate my file which was buried in an old warehouse in a closed file section.

When I received your notice I searched my diary and computer and finally located the attached, Exhibits "A" and "B."

As I further told you I have been seriously ill during the past several years so even the action to cure the late Maintenance Fee which would have been available fell by the wayside (see Exhibit "C.")

I strongly feel that the foregoing explanation satisfies the threshold requirement for Unavoidable Delay.

If the Office of Petitions have request for any other documentation, I will gladly supply what I have in my File.

I respectfully request that my Petition be Granted.

Respectfully submitted,

/s/ Anthony D. Cipollone

(Emphasis, the original.)

Exhibit "B" purports to be a computer printout listing four (4) items stretching across a time span commencing on 7 February, 1997, and continuing through an unspecified date in the year 2010: three (3) of the items appear to be unrelated, and the fourth states:

"[07/02/1997] PAT # 5,185,582 (sic) EDWARD LAZORCHAK  
MAINTENANCE FEE DUE"

EXHIBIT "C" purports to be a billing to Petitioner/Counsel from a physician with reference to billing for professional services commencing with a consultation on 18 November, 1998, and reflecting a "CORONARY ARTERIAL GFT" on 24 November, 1998.

For completeness of the record, the reasons for unavoidable delay in payment of fee as specified by Petitioner in the original petition are set forth in footnote below.<sup>12</sup> (No documents were supplied in support of the original petition.)

#### IV. ANALYSIS

##### Factual Analysis

Because the Office is under no duty to provide Notice, it is of no moment that Petitioner did not receive from the Office a Notice regarding the Maintenance Fee Due and/or Notice of Expiration. However, while Petitioner states that:

at least one Office mailing regarding the instant matter was directed to Petitioner's old Saddle Brook address, and

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<sup>12</sup> Petitioner's statement in support of his original petition, filed 29 September, 2000, is as follows:

##### REASONS FOR THE UNAVOIDABLE DELAY IN PAYMENT OF FEE

On [18 August, 2000, I wrote a letter to the Patent Office requesting information on [Patent No. 5,185,542] regarding the Maintenance Fee.

I was informed on [24 August, 2000,] that the Patent had expired [9 February, 1997,] and that the Maintenance Fee Notice had been sent to 299 Market Street Saddle Brook, New Jersey 07662.

I have not been at the Saddle Brook office since 1994.

Further, I have had two address changes which have been forwarded to the Patent Office since 1994, one at 333 Sylvan Avenue, P.O. Box 13031, Englewood Cliffs, New Jersey 07633, and one at One Essex Street, Hackensack New Jersey 07601.

During 1998, I was seriously ill and had several medical heart procedures due to congestive heart failure and a coronary bypass in November 1998.

During that period of time I was seriously delinquent in following upon my schedule. The Maintenance Fee due fell by the way side.

As soon as I was able, and when I realized that I may have missed a payment, I contacted the Patent Office with the results as aforesaid.

The foregoing is an extraordinary situation which would require a waiver sua sponte by the Commissioner in the interests of justice.

Respectfully submitted,

/s/Anthony D. Cipollone.

- not only has Petitioner moved twice since having that Saddle Brook address, but also Petitioner has notified the Office of his changes of address,<sup>13</sup>

an examination of Office record in this matter indicates that Petitioner's address remains the Saddlebrook, New Jersey, address.<sup>14</sup>

Further examination of the record demonstrates that:

Petitioner placed his file for the instant patent in storage at some undetermined time after issue in 1993; thereafter the file was misplaced or otherwise "buried in an old warehouse."

The record is absolutely silent as to any evidence addressing Petitioner's attempt to maintain the instant patent in the time period during which the first window opened on 9 February, 1996, and closed at midnight on 9 August, 1996, for payment without surcharge.

Therefore, as to an inquiry of whether Petitioner had in place a method to ensure timely payment of the maintenance fees for this patent in the period from 9 February through 9 August, 1996--the period within which the first payment window opened, the fee became due, and the first window closed--the answer is: No.

while Petitioner appears to have calendared (in a paper diary and in a computer docket) for attention a patent numbered 5,185,582, there is no showing whatsoever that Petitioner:

--ever calendared the correct number of the patent (5,185,542) or its original application number, or

--ever attempted to act on the incorrectly numbered item listed in his paper Diary and his computer database.

In other words, having calendared the wrong patent, Petitioner took no action even as to that.

In addition, Petitioner states that his secretary, "who had been entrusted with the follow-up of this matter, suddenly left in 1996."

It is, however, Petitioner--not the unidentified secretary--who is registered before the Office and undertook representation of the inventor. While Petitioner may have entrusted the secretary with follow-up in this matter during the pendency of her employment:

--by Petitioner's own description of events the unidentified

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<sup>13</sup> See Fn. 11

<sup>14</sup> The Office has available for use by practitioners and *pro se* applicants a customer-number system--which allows one to update address and other contact information in all of a customer's files simultaneously. However, the Office is not free to initiate a customer number if one is not requested. As a result, Petitioner was responsible for updating that information on an item-by-item basis. Unfortunately, Petitioner has made no showing that--in the instant matter--he provided to the Office a Notice of either address change during the six- (6-) year interval by submitting a copy of: (a) the Notice(s), and (b) the post card stamped by the Office acknowledging receipt of the Notice(s). In any case, such a showing in and of itself would not satisfy Petitioner's burden of proof herein.

secretary ended her employment with Petitioner well before the patent expired, and

--it is Petitioner who had oversight of the secretary and responsibility for the maintenance fee in this matter.<sup>15</sup>

Clearly, then, while Petitioner calendared something for action two (2) days before the expiration of the instant patent, Petitioner has failed to evidence that:

--it was the instant patent that Petitioner calendared for action, or

--he in fact acted on the erroneous calendar listing, or

--he diligently oversaw the efforts of another with regard to acting to pay the maintenance fee for the patent; or

--he diligently reviewed events and/or their anniversaries after his unidentified employee left his employ.

Therefore, as to an inquiry of whether Petitioner had in place a method for seeing that the fees for this patent were timely paid from 10 August, 1996, through 9 February, 1997, the period within which the second payment window opened, the fees and surcharge became due, and the second window closed, the answer is: No.

Petitioner's documentation supports his statement that he underwent heart surgery in late November of 1998.

However, that event accounts for only a relatively brief part of the twenty-four months following expiration of the patent: Petitioner fails to address either the interval from 10 February, 1997, until his diagnosis on or about 18 November, 1998, or the two- (2-) plus month interval following surgery through 9 February, 1999. Notwithstanding Petitioner's illness, his professional responsibilities require that some provision be made to attend to client matters.

Therefore, as to an inquiry of whether or not Petitioner had in place a method for seeing that the fees for this patent were paid between 10 February, 1997, and midnight 9 February, 1999, the answer is: No.

Similarly, as to an inquiry of whether or not Petitioner had in place a method for seeing that the fees for this patent were timely paid between payment of the maintenance-fee-as-unavoidably-delayed before or after 9 February, 1999, the answer is: No.

In fact, the fourth window never could have opened for Petitioner because the record is void of any documentary evidence that the Petitioner had in

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<sup>15</sup> It is logical that Petitioner either replaced the secretary who left his employ in 1996 and/or undertook himself the duties the departed secretary previously provided. In any case, with the replacement secretary or alone Petitioner--if a prudent individual operating in the fashion foreseen in Pratt--would have reviewed for handling and handled items arising after the departure of the earlier secretary. However, Petitioner has made no such showing of such prudent action herein.



place any method for seeing that the fees for the instant patent were paid timely.

### Legal Analysis

Generally, a late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. 133 because 35 U.S.C. 41(c)(1) uses the identical language, *i.e.*, "unavoidable" delay.<sup>16</sup> Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.<sup>17</sup> In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."<sup>18</sup>

And a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.<sup>19</sup>

The regulations at 37 C.F.R. §1.378(b)(3) require a showing that "the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely." Moreover, the showing must:<sup>20</sup>

- enumerate the steps taken to ensure timely payment of the maintenance fee as well as the reasons why payment was not timely made;
- present, with appropriate evidence, all the causes that contributed to the failure to timely pay the maintenance fee; and
- specify the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Even if a breach of duty by Petitioner as Counsel is the cause of the failure to maintain the patent and/or demonstrate unavoidable delay, those actions or inactions are imputed to the patent owner, who selected his counsel.<sup>21</sup>

Rather, in the absence of a showing that the attorney/agent has acted to deceive the

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<sup>16</sup> Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)).

<sup>17</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Hendrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

<sup>18</sup> Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

<sup>19</sup> Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

<sup>20</sup> This showing may include, but is not limited to, docket records, tickler reports, and file jacket entries for this application.

<sup>21</sup> Link v. Wabash Railroad Co., 370 U.S. 626, 633-634, 82 S.Ct. 1386, 1390-91 (1962).

client,<sup>22</sup> the neglect of a party's attorney is imputed to and binds the party by the consequences.<sup>23</sup>

At bottom, the question is one of diligence.<sup>24</sup> And the record does not demonstrate Petitioner's diligence as to the patent's maintenance.

#### Direct Evidence

Perhaps as stark as the absence of diligence or attention to the process of maintenance in this matter is the absence of documentation provided by Petitioner in support of--or claimed to be available for--the petition in this record. The expiration/abandonment of this patent took place by operation of law, *inter alia*, for failure to pay timely the maintenance fee. Petitioner, for whatever reasons, has "failed to provide any *direct evidence* proving exactly"<sup>25</sup> a factual basis supporting the showing of unavoidable delay required for relief to be granted. Petitioner was made aware of this requirement. (The March 2000 Dismissal, p. 3.)

Absent such direct evidence, the petition cannot be granted.

#### IV. CONCLUSION


Therefore, the petition for reconsideration is granted to the extent that this review has been made and rendered.

In all further respects, the petition must be and hereby is **DENIED**.

This decision may be viewed as final agency action. See M.P.E.P. 1002.02(b). The provisions of 37 C.F.R. §1.137(d) do not apply to this decision.

The application file is being forwarded to Files Repository.

Telephone inquiries regarding this decision should be directed to Petitions Attorney John J. Gillon, Jr. at (703) 305-9199.



Manuel A. Antonakas  
Director  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>22</sup> When an attorney intentionally conceals a mistake he has made, thus depriving the client of a viable opportunity to cure the consequences of the attorney's error, the situation is not governed by the stated rule in Link for charging the attorney's mistake to his client. In re Leonardo, 17 USPQ2d 1455 (Comm'r. Pat. 1990).

<sup>23</sup> See Huston v. Ladner, 973 F.2d 1564, 23 USPQ2d 1910 (Fed Cir. 1992); Herman Rosenberg and Parker-Kalon Corp. v. Carr Fastener Co., 10 USPQ 106 (2d Cir. 1931).

<sup>24</sup> See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53156-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997). See also: Ray v. Lehman, *supra*.

See also: Krahn v. Commissioner, 15 USPQ2d 1823 (E.D. Va. 1990) (Emphasis supplied).

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*1990 Commr. Pat. LEXIS 18, \*; 17 U.S.P.Q.2D (BNA) 1455*

In re Application of Robert Lonardo

Serial No. 399,365

Filed: September 21, 1973

For: THERAPEUTIC LEG AND FOOT DEVICE

Commissioner of Patents and Trademarks

*1990 Commr. Pat. LEXIS 18; 17 U.S.P.Q.2D (BNA) 1455*

August 6, 1990, Decided

**CORE TERMS:** abandoned, patent, revive, abandonment, diligent, diligence, neglect, drawings, unavoidable delay, state of health, consolidated, invention, issuance, revived, precarious, telephone conversation, pretrial conference, medical attention, follow-up, two-month, illness, gross-negligence, application process, heart problem, filing date, declaration, chargeable, purported, renewed, excused

**COUNSEL: [\*1]**

Zarley, McKee, Thomte, Voorhees & Sease  
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**OPINIONBY:** DENNY

**OPINION:**  
ON PETITION

The above-identified application ('365 application), naming Robert Lonardo as inventor, became abandoned on March 8, 1974, for failure to file formal drawings within a two-month period specified in an office communication dated January 7, 1974. On November 21, 1988, Lonardo filed a petition to revive the '365 application under 37 CFR § 1.137(a), which was denied on April 18, 1989. On May 4, 1989, Lonardo filed a further petition to revive the '365 application and a petition under 37 CFR § 1.183 to waive applicable rules, both of which were denied on August 4, 1989.

Lonardo then filed suit against the Commissioner in the United States District Court, Middle District of Florida (Civil Action No. 89-1329-CIV-T-13C), seeking a court order directing the Commissioner to revive the abandoned '365 application. On May 4, 1990, the district court granted the Commissioner's unopposed motion for stay and remand, and permitted the Patent and Trademark Office (PTO) three months to consider recently discovered additional evidence which might lead to granting of relief by the Commissioner. On [\*2] June 1, 1990, Lonardo filed a renewed petition to revive the abandoned '365 application.

Lonardo's renewed petition to revive is GRANTED.

To revive an abandoned patent application under 37 CFR § 1.137(a), the petitioner must establish that his application became abandoned due to "unavoidable delay." Proper considerations include the extent of diligence exhibited by the petitioner himself and by his attorney, in connection with the

delay for which the application became abandoned and also with their respective efforts to revive the abandoned application. The diligence of the attorney is relevant because one is ordinarily bound by the acts of his attorney. See Link v. Wabash R.R., 370 U.S. 626, 633-34, reh'g denied, 371 U.S. 873 (1962); Smith v. Mossinghoff, 671 F.2d 533, 5 USPQ2d 1130 (D.C. Cir. 1982); Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Ex parte Stuckgold, 1903 Dec. Comm'r Pat. 307, 308 (Comm'r Pat. 1903).

In this decision, the diligence of Lonardo is first considered, followed by that of his attorney, Max Schwartz ("Schwartz"). If Schwartz had not been diligent, whether his lack of diligence is excused by sickness or incapacity, [\*3] or otherwise not chargeable to Lonardo, is then considered.

Lonardo was diligent

Mrs. Lonardo persistently acted as Lonardo's agent for communicating with Schwartz, in connection with Lonardo's invention. Accordingly, Mrs. Lonardo's acts on behalf of Lonardo, and her knowledge of information obtained from Max Schwartz, are imputed to Lonardo.

Nothing in the record indicates that Lonardo was aware of the Examiner's communication dated January 7, 1974, which set a two-month period for submission of formal drawings. Though Schwartz received the office communication, he did not notify Lonardo of the outstanding requirement, nor did he submit formal drawings within the stated two-month period. Unless Lonardo should have known that Schwartz could not be trusted with prosecution of the '365 application, Lonardo could not be reasonably expected to take actions which would have avoided the abandonment which occurred. The facts do not show that Lonardo should have known that Schwartz was professionally incompetent or otherwise unreliable. Consequently, it cannot be reasonably said that Lonardo contributed to the abandonment of the '365 application through his own lack of diligence. [\*4]

The record also indicates that Lonardo was not less than diligent from the time of abandonment of the '365 application on March 8, 1974, to the time of filing of the substitute application on June 6, 1975, in not knowing that the '365 application had become abandoned. Lonardo suffered a heart attack in April of 1974, for which he needed the remainder of that year to recuperate. Through his wife, Lonardo attempted to contact Schwartz on numerous occasions in early 1975. Though Mrs. Lonardo had difficulty contacting Schwartz, she did manage to reach him by telephone on at least two occasions, once on March 24, 1975, and another time on April 1, 1975.

In the telephone conversation of March 24, 1975, Schwartz said he had been ill, apologized for neglecting his work, and stated that he would send a letter to Washington (presumably the PTO) to explain that he had been ill. In a note of even date with that telephone conversation, Mrs. Lonardo sent Schwartz a request for a copy of the letter Schwartz intended to send to Washington. In the telephone conversation of April 1, 1975, Schwartz assured Mrs. Lonardo that everything was fine and a patent would be issued momentarily. The second [\*5] conversation was followed by another note from Mrs. Lonardo to Schwartz which urged Schwartz to call as soon as he had news about the patent to be issued. Those facts indicate that Lonardo was concerned about progress of the '365 application, made multiple inquiries to Schwartz, and was assured by Schwartz that all was well and there was no need to worry. Lonardo was not less than diligent.

Lonardo never followed up on his request of March 24, 1975, asking Schwartz to send a copy of the letter to Washington. That inaction may appear to reflect lack of diligence. However, an unfulfilled request for the copy reflects more, not less, diligence than not having made the request at all. Also, Schwartz's further assurance of April 1, 1975, obviated any pressing need for the copy. Lonardo already knew the intended content of the letter, i.e., that Schwartz would explain that he had been ill; Lonardo's main concern was whether the application would progress toward issuance. Schwartz's representations to Mrs. Lonardo on April 1, 1975, that all was well and the patent would issue momentarily gave Lonardo the assurance he needed. In that circumstance, a physical copy of the letter [\*6] no longer has meaningful significance. Accordingly, Lonardo cannot be faulted for not further pursuing a copy of the letter Schwartz purported to be sending to Washington.

In May 1975, instead of receiving a copy of Schwartz's alleged letter to Washington, Lonardo received from Schwartz a substitute application. Lonardo considered the various applications,

whether a continuation-in-part (the '365 application was itself a continuation-in-part application of an earlier application) or a substitute, to be one single application process for obtaining a patent on his invention. To Lonardo, the substitute application was simply one other submission which was necessary to secure the issuance of a patent for his invention. From that perspective, the substitute application does not give notice to Lonardo that something had gone wrong in the application process.

Lonardo's not confronting Schwartz on why Schwartz sent a substitute application to be executed rather than a copy of the purported letter to Washington should not work toward Lonardo's detriment. The substitute application reflects further efforts expended by Schwartz to secure a patent for Lonardo's invention; Lonardo had insufficient [\*7] basis to doubt its propriety. It cannot be reasonably said that Lonardo should have preferred to receive a copy of the purported letter to Washington, rather than the substitute application; while the former is intended as an explanation of Schwartz's illness, the latter represents a work product which brought Lonardo closer toward obtaining a patent. From Lonardo's perspective, the '365 application was being taken care of and was advancing toward issuance; whether he received a copy of Schwartz's letter to Washington, and even whether Schwartz had sent such a letter, are relatively inconsequential in that circumstance. Thus, Lonardo exhibited ample diligence toward securing issuance of a patent for his invention by promptly executing the substitute application on May 16, 1975.

Lonardo first learned of the abandoned status of the '365 application on September 20, 1988, from opposing counsel in a patent infringement action involving the patent which issued from the substitute application. For the period from the execution of the substitute application on May 16, 1975, to September 20, 1988, the record shows no reason for Lonardo to question the status of the '365 application. [\*8] From Lonardo's perspective, there was a single patent application process which resulted in the issuance of the patent; whatever applications were involved in that process have merged into the resulting patent. It cannot be said that Lonardo was not diligent in the period from May 16, 1975, to September 20, 1988, in connection with not knowing that the '365 application had been abandoned.

Lonardo filed the first petition to revive the '365 application on November 21, 1988. Though two months have passed from the time when he first learned that the '365 application had gone abandoned, that does not constitute excessive delay in light of the need to gather facts relating to events of more than 14 years ago. Lonardo was not less than diligent in seeking to revive the '365 application, once the abandoned status of the application was made known to him on September 20, 1988.

Also, based on this record, Lonardo had no reason not to retain Schwartz as his attorney or to rely on Schwartz throughout the prosecution of the '365 application. Though we find Schwartz to be unable to perform his responsibilities after April 1973, as discussed below, Lonardo did not know that and we cannot [\*9] say that Lonardo should have known.

For the foregoing reasons, Lonardo's own conduct cannot be regarded as less than diligent and thus precluding him from establishing unavoidable delay under 37 CFR § 1.137(a).

Schwartz was not diligent

Schwartz received the office communication dated January 7, 1974, which set a two-month period for submission of formal drawings. Though Schwartz's status letter of April 15, 1974, referred to a prior request from Schwartz for the Examiner to order the transfer of formal drawings from an abandoned parent application, it did not indicate when the request was made nor whether the Examiner had agreed to take such action. Indeed, the last paragraph of the letter suggested that no agreement had been reached with the Examiner, in stating: "please advise whether an action will be forthcoming in accordance with the above [pending request for the Examiner to order the transfer of formal drawings from the parent application]." Because formal drawings were not filed by March 7, 1974, the '365 application became abandoned. On this record, Schwartz had not been diligent, and his lack of diligence caused the abandonment of the '365 application.

Though [\*10] a patent office communication dated May 2, 1984, was sent to Schwartz, which

noted that the '365 application had become abandoned, Schwartz's file for the '365 application does not contain that official communication. Nevertheless, sometime between April 15, 1974, and May 1975, Schwartz became aware of the abandoned status of the '365 application; that fact is inferred from his preparing a "substitute application" for Lonardo's execution in May 1975. Upon learning that the '365 application had become abandoned, Schwartz should have taken steps to revive the application; he should have known that the substitute application would not be entitled to the benefit of the '365 application's filing date. For the entire period from when he first learned of the abandoned status of the '365 application to his death in December 31, 1980, Schwartz made no attempt to revive the '365 application; he was less than diligent in that regard.

Not charging Schwartz's failure to revive the application to Lonardo

It is an established principle that the neglect or exercise of judgment of an attorney is chargeable to his client, and thus the client would have to suffer the consequences of his attorney's [\*11] conduct. The rationale, as articulated in Link v. Wabash R.R., 370 U.S. 626, 633-34 (1962), is that because the client voluntarily chose his own representative, he cannot seek to avoid the consequences or acts of this freely selected agent. The Court stated, id. at 634 n.10, that if the attorney's conduct falls substantially below what is reasonable under the circumstances, the client's remedy is a malpractice suit against the attorney.

In Link, the district court notified counsel for each side of the scheduling of a pretrial conference on October 12, 1960, at 1 p.m. On the morning of the scheduled date, plaintiff's counsel telephoned the courthouse for the judge, and was informed that the judge was on the bench. Plaintiff's counsel then left this message for the judge:

"that he [counsel] was busy preparing papers to file with the [Indiana] Supreme Court," that "he wasn't actually engaged in argument and that he couldn't be here by 1:00 o'clock, but he would be here either Thursday afternoon [October 13] or any time Friday [October 14] if it [the pretrial conference] could be reset."

Id. at 628. After plaintiff's counsel failed to attend the pretrial conference, [\*12] the district court, upon review of the history of the case, dismissed the action for counsel's failure to appear for pretrial conference and for failure to prosecute. The Court of Appeals affirmed the district court. The Supreme Court in Link recognized that the review in that case involved the propriety of the district court's dismissal of the action under Federal Rules of Civil Procedure 41(b), 370 U.S. at 630, and not any refusal by the district court to grant plaintiff's request for relief from judgment under Rule 60(b). In particular, the Court stated: "petitioner never sought to avail himself of the escape hatch provided by Rule 60(b)," id. at 632, and expressly left open the question whether the district court would have abused its discretion had it rejected a motion under Rule 60(b). Id. at 635.

In the context of relief from judgment under Rule 60(b), some courts have not broadly applied Link's rule that an attorney's conduct is chargeable to his client, when the conduct is deemed to involve gross-negligence rather than ordinary neglect, e.g., Boughner v. Secretary of Health, Education and Welfare, 572 F.2d 976, 978 (3rd Cir. 1978); L.P. Steuart, [\*13] Inc., v. Matthews, 329 F.2d 234, 235 (D.C. Cir. 1964), cert. denied, 379 U.S. 824 (1964), or simply when a default judgment is due to counsel's neglect. Jackson v. Beech, 636 F.2d 831, 837 (D.C. Cir. 1980); see also Carter v. Albert Einstein Medical Center, 804 F.2d 805 (3rd Cir. 1986) (vacating default judgment upon review of denial of relief under Rule 60(b), without classifying counsel's negligence as either ordinary or gross). Lonardo has not identified any decision of the Commissioner which distinguished gross-negligence from ordinary neglect when deciding whether to charge the conduct of an applicant's attorney to the applicant. But whether such a distinction is proper need not be decided here, because we cannot charge Schwartz's conduct to Lonardo for a different reason, i.e., attorney's intentional deception of his client.

When an attorney intentionally conceals a mistake he has made, thus depriving the client of a viable opportunity to cure the consequences of the attorney's error, the situation is not governed by the stated rule in Link for charging the attorney's mistake to his client. See Jackson v. Washington Monthly Co., 569 [\*14] F.2d 119, 122 n.18 (D.C. Cir. 1977):

The gross-neglect rule of L.P. Steuart has been criticized as discordant with Link. 7 J. Moore, Federal Practice P60.27[2], at 369-370 n.47 (2d ed. 1975); see United States v. Cirami, 535 F.2d 736, 740-741 (2d Cir. 1976). But even if that were so, an attorney's deception of a blameless client would survive as a basis for relief under Rule 60(b)(6). See 7 J. Moore, supra, P60.-27[2], at 368 n.44. When a client does not knowingly and freely acquiesce in his attorney's neglectful conduct, but instead is misled into believing that the attorney is industrious, dismissal is not only a harsh step but one for which the circumstances provide little support for an agency theory as a rationale. Cf. Thane Lumber Co. v. J. L. Metz Furniture Co., 12 F.2d 701, 703 (8th Cir. 1926); Chamberlain v. Amalgamated Sugar Co., 42 Idaho 604, 247 P. 12, 14 (1926).

United States v. Cirami, 563 F.2d 26 (2d Cir. 1977), involved a situation in which the district court's denial of relief under Rule 60(b)(6) was reversed on the basis that the attorney's failure leading to dismissal of the action was demonstrated to be due to mental illness. [\*15] That decision has been broadly interpreted by at least one district court as representing the view that any counsel's conduct of more than ordinary neglect or gross-negligence should not be charged to his client in the context of a request for relief under Federal Rules of Civil Procedure Rule 60(b)(6). As stated in DeBonavena v. Conforte, 88 F.R.D. 710, 712-13 (D. Nev. 1981):

This Court views the legal propositions set forth in the Cerami cases as not necessarily limiting relief to those cases where there is mental illness. It seems that the philosophical basis of Cirami is somewhat broader. The essential question in the view of this Court is whether counsel's inaction was due to something more than negligence or neglect.

Sometime between April 15, 1974 and May of 1975, Schwartz must have learned that the '365 application had gone abandoned, because he prepared an identical substitute application and sent it to Lonardo in May 1975, to be executed, and filed the substitute application on June 6, 1975. The only reasonable inference which can be drawn from that circumstance is that Schwartz was aware the '365 application had become abandoned. Furthermore, at no time [\*16] did he inform Lonardo of the abandoned status of the '365 application, despite Mrs. Lonardo's inquiries about the status of the application. On this record, it is reasonable to conclude that Schwartz knowingly concealed the abandonment of the '365 application from Lonardo, and covered up the abandonment by filing and prosecuting the substitute application as though it were the '365 application. His efforts in concealment were so successful that no one discovered the abandonment of the '365 application until more than fourteen years later in an infringement suit involving the patent which issued from the substitute application.

For the foregoing reasons, Schwartz's non-diligence in failing to have the abandoned application revived cannot be charged to revived cannot be charged to Lonardo.

Initial abandonment was due to Schwartz's illness

This case involves factual circumstance which existed in early 1974, in the two months immediately preceding March 8, 1974, in which Schwartz should have filed a response in the '365 application. Sixteen years have passed since 1974, and much evidence which could have been available at that time are not available today. Nevertheless, the [\*17] record can support a finding that Schwartz's ability to perform his responsibilities as a patent attorney was impaired during the period in question. Though the record might also support a contrary finding, that contrary finding is less plausible. Rather, Schwartz's health was so precarious after April 1973 that his failure to file a response in the '365 application between January 7, 1974, and March 7, 1974, was due at least in part to illness. Consequently, his lack of diligence in failing to respond to the office action is excused within the meaning of unavoidable delay under 35 U.S.C. § 133.

In 1973, Dr. Ezra Sharp had been Schwartz's treating physician for many years. According to Dr. Sharp's testimony, Schwartz considered himself well-versed in medicine, and rarely sought professional medical advice because he often made his own diagnosis and treated himself. Dr. Sharp testified that when Schwartz had his first heart problem, Schwartz even refused to go to the hospital and had to be treated at home as a result of which Dr. Sharp was deprived of opportunities to administer follow-up treatment.

Based on Dr. Sharp's testimony, we find that Schwartz was not an ordinary person [\*18] insofar as the need to obtain professional medical assistance is concerned. For instance, he apparently was not likely to accept medical assistance until he had exhausted all means he thought were appropriate to treat himself. Consequently, whenever Schwartz would seek professional assistance, he was likely to have needed that professional medical attention at a much earlier time. Similarly, since he was not treated or seen by a physician, he might well have been seriously ill and needed to be hospitalized. Schwartz's regard (or lack thereof) for professional medical care was not ordinary.

Dr. Sharp testified that he saw Schwartz as a patient on April 9, 1973, at which time an EKG revealed evidence of a Myocardial Infarct which had resulted from a heart problem from 20 years ago. Thus, we know that Schwartz's heart condition had a tendency to grow progressively worse. Also, Schwartz's state of health in April 1973 must have been extremely bad, because if not, he was unlikely to have sought professional medical attention. More importantly, because April 1973 was the last time Dr. Sharp saw Schwartz, Schwartz did not receive any professional follow-up treatment from Dr. Sharp; [\*19] and there is no evidence of record that Schwartz received professional follow-up medical attention from any other physician. Presumably, after April 1973 and until his death in 1980, Schwartz was acting as his own doctor, attempting cures by whatever means he considered appropriate. Based in part on the following six factors, Schwartz's state of health from April 1973 to when he died in 1980 at approximately 81 years of age was extremely precarious:

- (1) Schwartz's serious health condition in April 1973;
- (2) Schwartz's heart problem which worsened over time;
- (3) Lack of professional follow-up treatment after Dr. Sharp last saw Schwartz in April 1973;
- (4) Schwartz' general reluctance to seek professional medical attention;
- (5) Schwartz's tendency to make his own diagnosis and to treat himself;
- (6) Schwartz's advanced age.

In addition, Schwartz's precarious state of health undermined his abilities to fulfill responsibilities as a patent attorney. Other evidence directed to Schwartz's state of health of record before the PTO is not to the contrary. Schwartz himself told Mrs. Lonardo in the March 24, 1974, telephone conversation that he had been ill and he had neglect his work. [\*20] Mrs. Lonardo heard in 1974 from another attorney in Rhode Island, Elliot Salter, that Schwartz had been ill "for sometime." Leonard Michaelson, also an attorney in Rhode Island, testified that Schwartz had had a heart attack ten years or so before his death.

Based on the findings above, one would anticipate that if Schwartz continued his patent practice following April 1973, he would begin to fail in his professional duties, and that such failures will become more numerous as time went on. Indeed, the facts discussed below are in accordance with that anticipation. In particular, with regard to nine filed applications including the '365 application, Schwartz failed in his responsibilities once in 1974, once in 1976, once in 1977, once in 1978, thrice in 1979, and twice in 1980.

The prosecution history of seven other applications prosecuted by Schwartz from the period of June 1976 to December 1980, are relevant. Those applications, in chronological order of the filing date, are:

<b>Serial No.</b>	<b>Filing Date</b>	<b>Patent No.</b>
1. * * * *	* * * *	(not issued)
2. 696,486	06/15/76	4,378,948
3. 852,082	11/16/77	4,356,793
4. * * * *	* * * *	(not issued)
5. D-949,812	10/10/78	D.269,300
6. D-949,813	10/10/78	D.268,619



[\*21]

Each of the above-identified seven applications became abandoned sometime during prosecution as a result of Schwartz's failure either to respond at all or to respond timely to an office action. Applications 1 and 4 above are not specifically identified because they have not issued as United States patents and thus have confidential status under 35 U.S.C. § 122. Schwartz refiled applications 3, 5, and 6 in December 1980, even though there were intervening sales in at least application 3.

Application 1 became abandoned because Schwartz did not respond to an office action dated October 21, 1977, for which a response was due on December 21, 1977. Application 2 became abandoned because Schwartz did not respond to an office action dated September 22, 1976, for which a response was due on December 22, 1976. Application 3 became abandoned because Schwartz did not respond to an office action dated September 26, 1978, for which a response was due on December 26, 1978. Application 4 became abandoned because Schwartz did not respond to an office action dated March 27, 1980, for which a response was due on June 27, 1980. Application 5 became abandoned because Schwartz did not respond to [\*22] an office action dated July 25, 1979, for which a response was due on August 25, 1979. Application 6 became abandoned because Schwartz did not respond to an office action dated June 4, 1979, for which a response was due on July 5, 1979. Application 7 became abandoned because Schwartz filed a response on January 28, 1980, to an office action dated October 25, 1979, for which a response was due on January 25, 1980.

An eighth application prosecuted by Schwartz, serial number 912,385, filed on June 5, 1978, also became abandoned as a result of Schwartz's failing to respond to an office action dated October 25, 1978, for which a response was due on January 25, 1979. Schwartz succeeded in reviving the abandoned application under Rule 137 on the basis of a mistake in docketing the office action for response; his petition to revive the application was granted on November 28, 1979. That application is now issued as United States Patent No. 4,211,190.

After Schwartz's death, petitions were filed in each of the above-listed seven applications to have them revived. The respective petitions were followed by a consolidated petition for revival of all seven applications. In all applications [\*23] except for applications 2 and 5, the initial petitions had already been denied when the consolidated petition was filed. Subsequent to the filing of the consolidated petition in each application, the petitions were granted and each application was revived. In each decision granting respective petitions, the PTO attributed Schwartz's failure to respond timely to his "inability to perform his responsibilities."

The seven applications were revived mainly on the basis of the consolidated petition, which included (1) a declaration of Dr. Ezra A. Sharp; and (2) a declaration of Herbert Barlow, a patent attorney who took over several of Schwartz's on-going patent matters after Schwartz's death. Incidentally, it is noted that the consolidated petition misstated the filing date of application 1 as January 21, 1978, of application 2 as December 22, 1976, and of application 7 as January 25, 1980.

In addition to Dr. Sharp's testimony already discussed above, Dr. Sharp stated:

In recent years I have had no doctor-patient relationship with Max Schwartz that would enable me to provide a professional opinion as to his mental deterioration in recent years. However, his senility would not be [\*24] inconsistent with my prior observations of him during those occasions when I was called upon to treat his heart problems.

Mr. Barlow stated that his law firm assumed the prosecution of a number of patent applications which were formerly handled by Schwartz. His testimony recounted three instances in which Schwartz had not filed completed United States patent applications which should have been filed, and nine instances in which Schwartz caused erroneously instructed foreign associates to drop the prosecution of corresponding foreign applications. Mr. Barlow stated that the foreign applications were filed "in the fall and early spring of 1978-79." He also stated that one of the three unfilled

United States patent applications included a signed declaration dated September of 1979; no dates for the other two unfilled United States applications were noted.

As evidenced above, Schwartz's course of professional failures subsequent to April 1973 was progressively worse. The failures began in early 1974 and became more frequent in the following years. Because Schwartz's state of health became precarious as early as April 1973, there is no reason to isolate the year 1974 and treat it differently [**\*25**] from the later years. Accordingly, the initial abandonment of the '365 application was due at least in part to Schwartz's illness and thus excused within the meaning of unavoidable delay under 35 U.S.C. § 133. See e.g. *In re Mattullath*, 1912 Dec. Comm'r Pat. 490, 493 (App. D.C. 1912); *Ex parte Sellers*, 1905 Dec. Comm'r Pat. 336 (Comm'r Pat. 1905); *McDuffee v. Hestonville*, 181 F. 503, 510-11 (E.D. Pa. 1910).

#### Conclusion

For the foregoing reasons and on this rather unusual set of facts, Lonardo has demonstrated unavoidable delay within the meaning of 35 U.S.C. § 133, and the renewed petition under 37 CFR § 1.137(a) to revive the '365 application from abandonment is granted.

James E. Denny  
Deputy Assistant Commissioner for Patents

Service: **Get by LEXSEE®**

Citation: **17 uspq2d 1455**

View: Full

Date/Time: Wednesday, September 29, 2004 - 6:53 PM EDT

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Contacts:

Brian Hearn, 703-3051820

Steve Brantley, 703-3065683

RE U.21-CIP:

If no filing date, then cannot go abandoned.

Therefore, only can complete the application.

1. Could challenge the finding of incomplete application, such as by contesting the need for drawings, or only claiming an invention for which a drawing is not needed (based on originally filed specification).
2. Or could supply drawings and accept a later filing date.
3. Could file de novo. This would mean dealing with own publications and patents as prior art.

If #2, need to determine whether can claim priority to application(s) being revived.

Petition could be via 1.181. Due to 1.181(f), would file Terminal Disclaimer (waiving (f)).

Petition could be via 1.183, but when waive the rule the PTO may compel other things, like filing a TD.

BEFORE THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENTS AND TRADEMARK OFFICE

HARRY I. MOATZ,	)	
	)	
Director, Office of	)	
Enrollment and Discipline,	)	
	)	
v.	)	Proceeding No. D02-14
	)	
GEORGE A. BODE,	)	
	)	
Respondent.	)	
_____	)	

FINAL DECISION UNDER 37 C.F.R. § 10.156

The Hon. Susan Biro (“ALJ”) issued an Initial Decision (“ID”) finding that Respondent backdated three certificates of mailing; failed to communicate with clients, resulting in eight patent and trademark applications going abandoned; and failed to respond to Requirements for Information (RFIs) issued by the Office of Enrollment and Discipline (OED). Specifically, the ID found that by backdating certificates of mailing Respondent violated the following rules: USPTO Disciplinary Rule (“Rule”) 10.23(b), by engaging in conduct involving misrepresentation; Rule 10.23(b)(6), by engaging in conduct that adversely reflects upon his fitness to practice; and Rule 10.23(c)(9), by knowingly misusing certificates of mailing. The ID found that through various failings involving his representation of several clients, Respondent violated the following rules: Rule 10.23(c)(8), by failing to inform clients of correspondence; Rule 10.77(c), by neglecting legal matters entrusted to him; and Rule 10.84(a)(2), by failing to carry out contracts for employment. Finally, the ID found that by failing to respond to RFIs, Respondent violated the following rules: Rule 10.23(b)(5), by engaging in conduct prejudicial to the administration of justice, Rule 10.23(b)(6), by engaging in conduct

adversely affecting his fitness to practice, and Rule 10.23(c)(16), by willfully refusing to reveal or report knowledge or evidence to OED. The ID recommended that Respondent be suspended from practice before the United States Patent and Trademark Office (“USPTO”) for seven years, with the final four years of the suspension to be stayed.

Respondent appealed the ID’s findings. The OED Director responded to the appeal and cross-appealed, arguing that Respondent’s conduct required his exclusion from practice before the USPTO. Respondent failed to respond to the OED Director’s cross appeal.

For the reasons discussed herein, all findings set forth in the ID are adopted, as is the recommended penalty.

#### Direct Appeal

Respondent’s appeal contains three substantive paragraphs. The first objects to the ID’s findings of facts and conclusions of law because “the [ALJ] ignored the testimony of the Respondent and the obvious contradictory and biased testimony of the witnesses against Respondent.” The second paragraph objects to the recommended sanction on precisely the same grounds. The third paragraph asserts the ALJ unfairly favored the Government and ignored the bias of its witnesses because the ALJ “ignored the testimony that the Director has long been investigating and harassing the Respondent and seeking to impair the Respondent’s ability to practice before the Office.”

The hearing in this matter elicited conflicting testimony concerning a number of facts material to the resolution of the charges against Respondent. The well-reasoned ID resolved these conflicts through explicit analysis of various indicia of reliability, including the demeanor of testifying witnesses. In many instances, the ALJ found

Respondent's testimony less credible than that of the witnesses against him. The ALJ's credibility determinations, based upon first hand observation of the witnesses' demeanor, and supported by careful analysis of the surrounding circumstances, are entitled to deference. Haebe v. Dep't of Justice, 288 F.3d 1288, 1300 (Fed. Cir. 2002); Bradley v. Secretary of Health and Human Svcs., 991 F.2d 1570, 1575 (Fed. Cir. 1993).

Respondent's brief, entirely devoid of any specific allegation of error, provides no basis to question them.

Similarly, Respondent does not refer to specific testimony that would establish that the OED Director's investigation was unduly prolonged or harassing, and no such testimony is apparent in the record. The OED Director, of course, did investigate Respondent, and, as Complainant in this matter, did seek to exclude him from practice before the Office. These facts, however, establish that the OED Director did his job, not that there is any error in the ID.

#### Cross Appeal

The ALJ indicated that if she had been writing on a clean slate she would have been "inclined to find the appropriate sanction in this case to be exclusion." However, after considering two previous Commissioner's Decisions addressing conduct similar to that involved here, the ID recommended a seven-year suspension with the final four years stayed. Specifically, the ID examined In re Klein, 6 USPQ 2d 1547 (1988), in which a practitioner found to have backdated certificates of mailing, neglected client matters, and provided misleading answers to OED RFIs was suspended for seven years, of which five were stayed, and Small v. Wiffenbach, 10 USPQ 2d 1898 (1989), in which a practitioner found to have engaged in similar conduct was suspended for five years.

The OED Director's Cross Appeal does not challenge the ID's conformance of the recommended penalty to those previously imposed by the USPTO in similar cases, but argues that the ID's comparison of the instant facts to those of the previous decisions was flawed. The ID noted that the Small decision had explained imposition of a longer effective suspension than that imposed in Klein because the practitioner in Small had involved his secretary in his backdating of mailing certificates and blamed her for them, had not been candid with the USPTO when asked about the backdating, had neglected entrusted legal matters, and had not shown contrition or remorse. The ID found that the Respondent here had not affirmatively made incorrect statements to OED about the backdating and had not attempted to place blame for it on anyone else. It therefore concluded that Respondent's conduct was not as serious as the conduct in Small, and imposed a shorter initially effective suspension.

The OED Director argues that the ID erred in finding that Respondent's conduct was less serious than that in Small. The OED Director asserts that, even though Respondent did not make false responses to the RFIs, the ID should have weighted his failure to respond more heavily in assessing the penalty. The ID was not unreasonable in treating Respondent's failure to respond to the RFIs as being less serious than making deliberate misstatements to OED.

The OED Director also alleges that Respondent lied to an OED investigator when he told the investigator that he would fax his response the RFIs and then did not do so. The ID actually found that, in a telephone conversation with the investigator, Respondent said that he did not have the response in front of him, but would ask his secretary to forward him a copy, which he would then forward to OED. ID at 19. The ID found that

OED never received the response. It is entirely possible that Respondent told the investigator that he would forward the response when he in fact had no intention of doing so. It is also possible, however, that, at the time he made the statement, Respondent intended to fax his response to OED, but that for some reason he ultimately failed to do so. The ID did not treat this episode as involving a misrepresentation to OED, and the record does not provide grounds to disturb this treatment.

The OED Director also asserts there is a strong likelihood that Respondent backdated filings in this case. While the ID refers to apparent discrepancies involving the dates on the certificates of service for several documents Respondent filed in this case, the ID does not conclude that the documents were in fact backdated. Further, the issue was not charged or litigated, and the record has not been developed as to the circumstances surrounding the filings. This is unlike the situation in Small, where misrepresentation to OED was charged and proven, and where a portion of the penalty was imposed directly on the basis of that violation. The ID did not err in distinguishing Small on this basis.

Finally, the OED Director argues that the ID found that Respondent misappropriated client funds and should have imposed more stringent discipline on the basis of this finding. The ID found that Respondent collected and held funds from one client to cover a \$605 USPTO issue fee; did not remit the fee to the USPTO, thus permitting the application to go abandoned; and failed to return the fee to the client. The ID noted, however, that it did not treat the misappropriation as a separate charge and that the ALJ did not see it as a deliberate usurpation of client funds. ID at 38, note 51.



Instead, the ID treated it as “part and parcel of Respondent’s general neglect of client matters.” Id.

If Respondent had been charged with misappropriation of client funds and these charges had been sustained, a more severe penalty might well have been warranted. Given the posture of the case, however, the ID appropriately treated Respondent’s failure to return the issue fee as part of his pattern of neglect. Viewed in this light, the apparent misappropriation does not fundamentally change the nature of the neglect. The ID expressly declined to find that Respondent had intentionally converted the funds. The amount at issue, although significant, is only of a fraction of the damage caused by Respondent’s neglect.<sup>1</sup> Thus, Respondent’s failure to return the issue fee does not itself warrant a more severe penalty under the neglect charges.

#### ORDER

Upon consideration of the entire record, and pursuant to 37 C.F.R. § 10.130(a), it is

ORDERED that thirty (30) days from the date this order is entered, George A. Bode, whose USPTO Registration Number is 30,028, shall be suspended from practice before the USPTO for seven years, with the final four years of the suspension stayed, and that Respondent Bode be placed on probation for the those four years. The terms of the probation are:

- (i) Respondent shall comply with all Disciplinary Rules applicable to patent attorneys practicing before the USPTO; and

---

<sup>1</sup> The ID found that the value of the abandoned patents and trademarks, had they been issued, was irrelevant. However, the \$605 issue fee is only a fraction of the total legal and USPTO fees paid but rendered futile as a result of Respondent’s neglect.

- (ii) No document in any patent or trademark application can be filed in the United States Patent and Trademark Office by or on behalf of Respondent which (a) uses a certificate of mailing under 37 C.F.R. § 1.8 and (b) indicates that the document was prepared by, worked on, or signed by or on behalf of, Respondent.

The Respondent's attention is directed to 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning petitions for reinstatement.

It is further ORDERED that this Final Decision in this proceeding be published.

#### RECONSIDERATION AND APPEAL RIGHTS

Any request for reconsideration of this decision must be filed within twenty (20) days from the date of entry of this decision. 37 C.F.R. § 10.156(c). Any request for reconsideration mailed to the PTO must be addressed to:

James A. Toupin  
General Counsel  
United States Patent and Trademark Office  
PO Box 1450  
Alexandria, Virginia 22313-1450

A copy of the request must also be served on the attorney for the Director of Enrollment and Discipline:

Sydney Johnson  
Associate Solicitor  
U.S. Patent and Trademark Office  
Post Office Box 16116  
Arlington, Virginia 22215

George A. Bode  
2314 Broadway  
New Orleans, Louisiana 70125

Sydney Johnson, Esq.  
Associate Solicitor  
United States Patent and Trademark Office  
Office of the Solicitor  
P.O. Box 16116  
Arlington, VA 22215

# **APPENDIX B**

## APPENDIX ITEM B-0

<b>Application Serial No.</b>	<b>Filing Date</b>	<b>Docket No. (Or Patent No.)</b>	<b>Internal Coding</b>
08/556,657	11-13-1995	M-95-3195	U.1
08/647,066	05-09-1996	Now 5,655,441	U.2
08/681,628	07-29-1996	M-95-3195-U.	U.3
08/681,627	07-29-1996	Now 5,720,218	U.4
08/681,658	07-29-1996	M-95-3195-U.	U.5
08/681,626	07-29-1996	Now 5,802,964	U.6
08/681,625	07-29-1996	M-95-3195-U.	U.7
08/681,624	07-29-1996	M-95-3195-U.	U.8
08/681,623	07-29-1996	M-95-3195-U.	U.9
08/681,622	07-29-1996	M-95-3195-U.	U.10
08/759,724	12-06-1996	M-95-3195-U.	U.11
08/759,723	12-06-1996	M-95-3195-U.	U.12
08/759,722	12-06-1996	Now 5,720,219	U.13
08/759,727	12-06-1996	M-95-3195-U.	U.14
08/763,679	12-11-1996	M-95-3195-U.1	U.16
08/884,529	06-27-1997	M-95-3195-U.	U.16
09/028,187	02-23-1998	M-95-3195-U.	U.17
09/377,936	08-20-1999	M-95-3195-U.	U.18
09/377,937	08-20-1999	M-95-3195-U.	U.19
09/641,790	08-18-2000	M-95-3195-U.20-CIP	U.20-CIP
09/835,919	04-16-2001	M-95-3195-U.21-CIP	U.21-CIP

**Subject: Re: [Fwd: [Fwd: Urgent USPTO Patent Issues]]**

**Date:** Tue, 05 Nov 2002 06:05:06 -0500

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I am completing the necessary petitions and will have copies of all documents to you ASAP.

I will be in Pensacola and New Orleans this week but this will not slow matters.

Vty,

G.A. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 802-8442

Fax: (863) 802-9160

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

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**Subject: Re: Any News???**

**Date:** Tue, 26 Nov 2002 03:59:30 -0500

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I am working on the InterCitrus intellectual property portfolios.

Vty,

GAB

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 802-8442

Fax: (863) 802-9160

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

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B-2

**Subject: Fw: InterCitrus Patent Matters**

**Date:** Fri, 7 Mar 2003 10:13:23 -0300

**From:** "Carlos Mendes" <carlosmendes@intercitrus.com.br>

**To:** carlosmendes@intercitrus.com.br

----- Forwarded message -----

Sr. Mendes:

I am in New Orleans until March 11, 2003. I will contact you with details by then.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288

Fax: (863) 680-2651

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

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>>> Carlos Mendes <carlosmendes@intercitrus.com.br> 02/25/03 07:23AM >>>  
George,

I trust all is well with you. I have not heard from you in a while, nor have I received any materials related to your most recent filings of corrective actions. Also, where are we with respect to the European patent, PCT, and other international patent matters? Will you please update us on the status of these matters. Thanks, and I look forward to hearing from you soon.

Best regards,  
Carlos

-----  
<http://www.techscorp.com.br>  
-----

B-3



**Subject: News and/or Materials**

**Date: Tue, 01 Apr 2003 14:46:27 -0500**

**From: "George Bode" <Gbode@ccmattorneys.com>**

**To: <carlosmendes@intercitrus.com.br>**

Sr. Mendes:

Acknowledge. I assume that you are back in Brasil. I will have a reply shortly.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288  
Fax: (863) 680-2651

Secondary:

Tele: (863) 647-5337  
Fax: (863) 647-5012

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W/George Bode

Cur  
21-10-03

⇒ (gave him copy (1) of P4 Video (VI))

⇒ on U.20: GAB will file a "Petition to Make  
    Special" so that  
    ⇒ we can move along faster (due to  
        potential pending (Twp) legal actions)

⇒ GAB will request 3 Certified True Copies  
    of EPO patent

    ⇒ GAB will recheck ~~off~~ on fees on EPO patent

---

• W/George A. Bode - 17 December 2003

    ⇒ we meet to discuss details of pats  
        after new year.

• W/ G. Bode & John Lancaster - lunch on 19/12/03  
    ⇒ lunch @ Panino's

---

• W/G.A. Bode : 10 JAN/2004

    > "promised a package of materials by tomorrow  
        night (11/JAN/04)..."

**Subject: InterCitrus Patent Matters**

**Date:** Sun, 18 Jan 2004 04:34:41 -0500

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I am preparing a package to send to you at work at our Araraquara, Brazil plant.

I have ordered file history of Tropicana Evans, et al. '189 "Juice Extractor" U.S. P

I have made another status inquiry of U.20 and the other pending patents.

I will be ready for your Board meeting next Tuesday morning at 10:00 am in the São P  
Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288

Fax: (863) 680-2651

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

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B-6

26 May 2004

1 of 1  
Notes / Memos

G.A. Bode

new cell: (908) 489-7773

⇒ no news to report on V.20, V.22, etc.

⇒ European Patent original still  
not found!

W/Mr. Edward Polk (POLK)

\* { Attorney w/ US Patent Office in Alexandria, Virginia  
w/ Office the Solicitor → (703) 305-8666

⇒ disciplinary complaint against Mr. Bode

⇒ "Improvement . . . ."

B-8

⇒ "applications abandoned"

\* ⇒ Backdating Certificates of Mailing  
\* incompetence . . .

\* August 20, 1999

⇒ Trial date set for November '02

August 16, 2002  
@ 11:30

W/Ed Polk: (edward.polk@uspto.gov.)

App: 09/377,936

→ went abandoned

→ not valid

{ "Improvements in a Modular  
Extraction System"  
filed August 20, 1999

⇒ Ed... "is ready to file the suit next week..."

W/Ed. Polk: @ 15:05 26/08/2002 (703) 305-8666

\* ⇒ Some applications have gone abandoned (!!!) because never  
responded or never paid dues: such as: 08/759,727  
08/759,723, 08/763,679 (1998) + 09/028,187 (2/23/98) + 09/884,529

\*\*\* ⇒ must now do "PETITION TO REVIVE" on all counts!

**Subject: Re: Bode Hearing**

**Date:** Mon, 23 Sep 2002 18:15:22 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** Edward.Polk@USPTO.GOV

**BCC:** "G. A. Bode" <gbode@ccmattorneys.com>, Ron Clark <rclark@ccmattorneys.com>

Mr. Polk,

As it turns out, this is my first day back in Brazil after having spent the last couple of weeks in Florida. At this time, I have no plans to be in the US in October. On the contrary, my agenda for October is all taken up with business in Brazil. I should next be in the US in sometime in December.

Best regards,  
Carlos Mendes

Edward.Polk@USPTO.GOV wrote:

> Mr. Mendes,

>

> I am writing this to let you know that the Judge has set the hearing in the  
> Bode case for October 8-11. The location has not been set; but will be in  
> either Washington DC or Pensacola, Florida. You mentioned that you spend  
> periods of time in Florida. Will you be in Florida anytime between the 8th  
> and 11th of October?

>

> Also, one of the inventors involved in the case is interested in bringing a  
> class action against Mr. Bode and asked me to pass his number along to any  
> other inventor that might be interested. His name is Halford S. Harris and  
> he can be contacted at (850) 479-8279.

>

> C. Edward Polk, Jr.

> Associate Solicitor

> United States Patent & Trademark Office

> Office of the Solicitor

> Tel: (703)305-8666 Email: edward.polk@uspto.gov

**Subject: [Fwd: Urgent USPTO Matters]**

**Date:** Fri, 30 Aug 2002 10:25:17 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

George,

Please confirm that you have received this message and are working the pending issues. Thank you.

Best regards,  
Carlos Mendes

---

**Subject: Urgent USPTO Matters**

**Date:** Tue, 27 Aug 2002 19:15:16 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

**CC:** Adriano Horta <adriano@terraroja.agr.br>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

Dear George,

I received another call from the USPTO regarding some of our applications submitted in the last few years. After some questioning, I was informed that "several of our applications have gone abandoned because of no follow-up actions". I further asked what specific applications and was informed that "at least" the following have "definitely been abandoned":

- 1) US Pat App. 08/759,723
- 2) US Pat App. 08/759,727
- 3) US Pat App. 08/763,679
- 4) US Pat App. 08/884,529
- 5) US Pat App. 09/028,187

From my end, I am still trying to investigate the specifics of these applications, and they all appear to be applications that we definitely want to maintain alive and pursue to patent publication. Some (from my records) show that they had **allowable material**, and were on their way to being issued. Please do a **most thorough and complete investigation** on these, and all of our other pending applications, with maximum urgency. I am very concerned, as is my Board, who needs to be reassured that all matters are under control and/or can be quickly and completely rectified so that our intellectual property rights are fully protected under US law. Please give this matter you utmost priority. I look forward to hearing from

**Subject: Re: [Fwd: Urgent USPTO Matters]**

**Date:** Mon, 02 Sep 2002 14:25:46 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

**BCC:** Fernando Horta Jr <fhortajr@terraroja.agr.br>,  
Adriano Horta <adriano@terraroja.agr.br>

George,

First of all, wish a very rapid and full recovery! I would like to call you tomorrow (Brazil time) if you are up to it. We can bring each other up to speed on the most r information regarding the patent issue. Let me know if this will work for you.

Best regards,  
Carlos Mendes

George Bode wrote:

> *Senhor Mendes:*  
>  
> *I was hospitalized and have been recuperating the last week. I hope to be back at*  
>  
> *I will be in Lakeland all week. Please let me know when you want to speak.*  
>  
> *Vty,*  
>  
> *George BODE*  
>  
> *George A. BODE, Esq.*  
> *BODE & ASSOCIATES, P.C.*  
> *500 South Florida Avenue*  
> *8th Floor*  
> *Lakeland, Florida 33801*  
>  
> *Primary:*  
>  
> *Tele: (863) 802-8442*  
> *Fax: (863) 802-9160*  
>  
> *Secondary:*  
>  
> *Tele: (863) 647-5337*  
> *Fax: (863) 647-5012*  
>  
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> *error, please notify the sender by e-mail reply. Thank you.*

B-11





# InterCitrus

Agroindustrial e Comercial S.A.

Araraquara , S.P., Brazil  
October 2, 2002

**Mr. George A. Bode**  
Bode & Associates  
500 South Florida Avenue - 8th Floor  
Lakeland, Florida 33801 - USA

Dear George,

It was good to meet with you last month to sort out the issues regarding some of our patent applications. I have reported to my Board of Directors our findings and have assured them that you will be giving this matter your highest priority. Resolving these issues with our patent applications in the USPTO, and other foreign agencies, is of the utmost importance as you well know. I trust you are well on your way to putting in order each and everyone of our patent applications.

I have made an intensive study of our records and files and have identified some critical problems, or issues, in regards to some of our patent applications. Some of these problem applications are the same ones we identified and discussed earlier in our meeting of last September 17. To give you a better understanding of the results of my study, I list below what we believe are the most problematic processes:

<i>Bode Control Number</i>	<i>InterCitrus Control Number</i>	<i>USPTO Application Number</i>	<i>Problem Areas</i>	<i>Corrective Actions</i>
<b>U.10</b>	11, 12 & 13	US. Pat.App. <b>08/681,622</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.11</b>	14	US. Pat.App. <b>08/759,724</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.12</b>	15	US. Pat.App. <b>08/759,723</b>	Allowable Material	File ASAP "Petition to Revive"
<b>U.14</b>	17	US. Pat.App. <b>08/759,727</b>	Allowable Material	File ASAP "Petition to Revive"
<b>U.15</b>	18	US. Pat.App. <b>08/763,679</b>	Allowable Material	File ASAP "Petition to Revive"
<b>U.16</b>	20	US. Pat.App. <b>08/884,529</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.17</b>	21	US. Pat.App. <b>09/028,187</b>	I have no record of this document	Find out status and revive if necessary
<b>U.18</b>	22	US. Pat.App. <b>09/377,936</b>	No action from USPTO - why?	Find out status and revive if necessary

B-12

**Subject: Re: Urgent USPTO Patent Issues**

**Date:** Mon, 07 Oct 2002 11:56:04 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, Ron Clark <rclark@ccmattorneys.com>, Adriano Horta <adriano@terraroja.agr.br>

**BCC:** CMN <carlosmendes@intercitrus.com.br>

George,

Can you please confirm receipt of the letter below. And, have you acted on (especially important item U.20-CIP), on the subject patent matters? Please let me know asap.

Best regards,  
Carlos

Carlos Mendes wrote:

George,

I trust you are well. I have concluded (sufficiently for now) a study on our patent application issues. I have attached a relevant letter and our master control list to this e-mail. Both documents are in Microsoft Word format, I trust will be able to open them. Nevertheless, I am also sending you hard copies of these documents via airmail.

Most urgent, I believe, is the filing of the needed corrections to your item **U.20-CIP** (Us Pat. App. **09/641,790**) with "Allowable Material" in order for this application issue as a patent. If I remember correctly, this needs to be done by tomorrow, October 3. Please confirm as soon as possible that you have taken the needed measures to assure issuance of this patent. We will talk soon. Please stay in touch.

Best regards,  
Carlos Mendes

**Subject: Re: [Fwd: InterCitrus Patents]**

**Date:** Fri, 18 Oct 2002 22:17:57 -0400

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

Acknowledged.

Vty,

G. A. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 802-8442

Fax: (863) 802-9160

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

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**Subject: [Fwd: Urgent USPTO Patent Issues]**

**Date:** Tue, 29 Oct 2002 16:44:48 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

**CC:** Ron Clark <rclark@ccmattorneys.com>, Adriano Horta <adriano@terraroxxa.agr.br>

**BCC:** CMN <carlosmendes@intercitrus.com.br>,

Fernando Horta Jr <fhortajr@terraroxxa.agr.br>

George,

I have not yet heard anything, nor have I received anything in the mail from you, regarding our urgent patent matters. Please let me know where we stand on these processes. We must move more quickly and decisively to resolve the pending problems. All components of our patent and trademark portfolio must be put in order.

Sincerely,  
Carlos Mendes

---

**Subject: Re: Urgent USPTO Patent Issues**

**Date:** Mon, 07 Oct 2002 11:56:04 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, Ron Clark <rclark@ccmattorneys.com>, Adriano Horta <adriano@terraroxxa.agr.br>

George,

Can you please confirm receipt of the letter below. And, have you acted on (especially important item U.20-CIP), on the subject patent matters? Please let me know asap.

Best regards,  
Carlos

Carlos Mendes wrote:

B-15

George,

I trust you are well. I have concluded (sufficiently for now) a study on our patent application issues. I have attached a relevant letter and our master control list to this e-mail. Both documents are in Microsoft Word format, I trust will be able to open them. Nevertheless, I am also sending you hard copies of these documents via airmail.

Most urgent, I believe, is the filing of the needed corrections to your item U.20-CIP (Us Pat. App. 09/641,790) with "Allowable Material" in order for this application issue as a patent. If I remember correctly, this needs to be done by tomorrow, October 3. Please confirm as soon as possible that you

**Subject: [Fwd: [Fwd: Urgent USPTO Patent Issues]]**

**Date:** Mon, 04 Nov 2002 12:06:43 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, Ron Clark <rclark@ccmattorneys.com>

**BCC:** CMN <carlosmendes@intercitrus.com.br>

Gentlemen,

Good morning to all. I have still not received any materials. Can you please let me know the status of these matters asap.

Best regards,  
Carlos Mendes

---

**Subject: [Fwd: Urgent USPTO Patent Issues]**

**Date:** Tue, 29 Oct 2002 16:44:48 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

**CC:** Ron Clark <rclark@ccmattorneys.com>; Adriano Horta <adriano@terraroja.agr.br>

George,

I have not yet heard anything, nor have I received anything in the mail from you, regarding our urgent patent matters. Please let me know where we stand on these processes. We must move more quickly and decisively to resolve the pending problems. All components of our patent and trademark portfolio must be put in order.

Sincerely,  
Carlos Mendes

---

**Subject: Re: Urgent USPTO Patent Issues**

**Date:** Mon, 07 Oct 2002 11:56:04 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, Ron Clark <rclark@ccmattorneys.com>, Adriano Horta <adriano@terraroja.agr.br>

George,

Can you please confirm receipt of the letter below. And, have you acted on (especially important item U.20-CIP), on the subject patent matters? Please let me know asap.

Any News???

**Subject: Any News???**

**Date:** Fri, 15 Nov 2002 16:09:12 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

George,

Any news???

Carlos



# InterCitrus

Agroindustrial e Comercial S.A.

Araraquara, S.P., Brazil  
November 22, 2002

**Mr. George A. Bode**  
Bode & Associates  
500 South Florida Avenue - 8th Floor  
Lakeland, Florida 33801 - USA

**Re: Lack of Service**

Dear George,

I do not understand why we have not yet heard from you with regards to our urgent patent matters. Since last August, having been alerted by Mr. Edward Polk, of the USPTO, to serious problems in several of our pending patent processes, we have tried to impress upon you our urgent need to resolve these issues. At the very least, we have an urgent need to initiate and file documents with the USPTO that can result in the needed corrective actions pursuant to the complete resolution of these patent issues. Over the last 6 weeks you have repeatedly promised to send us documents and copies of these corrective actions. Still, we have not yet received a single document, nor have we received any information that substantiates the fact that corrective actions are in place, and will be pursued to completion.

Over the last few months, for reasons unknown to us, we have seen a dramatic decline in the quality of your services, with regards to our national and international patent and trademark work. Our need for prompt and high quality service in these matters has never been greater. We must, and will have, the highest caliber of work in this area. Since 1995, and throughout last year, you rendered excellent services in these matters. We are quite frankly puzzled and frustrated with the lack of quality service of the last months.

We would like to know if you are still interested in handling our intellectual property work, and if so, what immediate corrective actions will you take to rectify this unsustainable situation. If you are not interested in continuing our relationship, please let us know so that we can pursue the transfer of this work to other specialized legal counsel.

Very truly yours,

Carlos Mendes  
Managing Director

Cc: F.P.L. Horta, Chairman, InterCitrus SA  
Ronald Clark, Esq.

B-18

CMN02L22-GBode

Avenida Engenheiro Camilo Dinucci, 5717 - CEP14.808-100 Araraquara São Paulo Brazil  
Telephone: 55-16-222-2933 Fax: 55-16-222-1751

**Subject: Re: Next Visit: December 11th**

**Date:** Tue, 10 Dec 2002 14:46:26 -0500

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I just returned.

Tomorrow - Wednesday, December 11, 2002, @ 10:30 AM @ my office. Please confirm!

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 802-8442

Fax: (863) 802-9160

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Fax: (863) 647-5012

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B-19



**Subject: MOney Sent**

**Date:** Tue, 21 Jan 2003 08:59:46 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

**CC:** Adriano Horta <adriano@terraroja.agr.br>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

Good Morning George,

The \$7,300.00 from your last bill was sent to your Hibernia bank account last Friday. Let us know if the money has arrived.

Do you have any further news on our USPTO pending patent applications? Have all the reactivation processes been received and acknowledged by the USPTO? Any new issuing patents? And, have you received the **3 Certified True** copies we need of our patent application U.S. Serial No. **09/835,919**? Have you received the original of the EPO Patent? Please let us know the latest developments in these matters.

I will likely be in Lakeland next week, on Friday, January 31. Perhaps we can meet for a quick update.

Best regards,  
Carlos Mendes

B-20

**Subject: Update**

**Date:** Thu, 23 Jan 2003 11:09:21 -0500

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

Confirm receipt of funds.

I will be prepared to meet with you on or after January 31, 2003, when you are next

Vty,

G.A. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

**Primary:**

Tele: (863) 686-8288

Fax: (863) 680-2651

**Secondary:**

Tele: (863) 647-5337

Fax: (863) 647-5012

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**Subject: Re: Update**

**Date:** Fri, 24 Jan 2003 12:15:55 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

**BCC:** Adriano Horta <adriano@terraoxa.agr.br>,

Fernando Horta Jr <fhortajr@terraoxa.agr.br>,

Ron Clark <rclark@ccmattorneys.com>,

John Lancaster <JLancaster@ccmattorneys.com>

Thank you George, I will see you next Friday at 1400. Have a good week end.

Best regards,  
Carlos

George Bode wrote:

> Sr. Mendes:

>

> Confirm appointment for Friday, January 31, 2003 @ 2:00 PM.

>

> Vty,

>

> G.A. BODE

>

> George A. BODE, Esq.

> BODE & ASSOCIATES, P.C.

> 500 South Florida Avenue

> 8th Floor

> Lakeland, Florida 33801

>

> Primary:

>

> Tele: (863) 686-8288

> Fax: (863) 680-2651

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> error, please notify the sender by e-mail reply. Thank you.

>

> >>> Carlos Mendes <carlosmendes@intercitrus.com.br> 01/23/03 01:13PM >>>

> George,

>

> Can we meet at 2:00 p.m. on Friday, January 31? This would be good for me. Please  
> works for you.

>

> Best regards,

> Carlos  
>  
> George Bode wrote:  
>  
> > Sr. Mendes:  
> >  
> > Confirm receipt of funds.  
> >  
> > I will be prepared to meet with you on or after January 31, 2003, when you are n  
> >  
> > Vty,  
> >  
> > G.A. BODE  
> >  
> > George A. BODE, Esq.  
> > BODE & ASSOCIATES, P.C.  
> > 500 South Florida Avenue  
> > 8th Floor  
> > Lakeland, Florida 33801  
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> > Primary:  
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> > error, please notify the sender by e-mail reply. Thank you.

**Subject: [Fwd: InterCitrus Patent Matters]**

**Date:** Thu, 06 Mar 2003 10:32:38 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

**CC:** Adriano Horta <adriano@terraroja.agr.br>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

George,

I need to discuss progress on these issues. Please update me via e-mail, on what you have so far. I will be in Lakeland on (Monday and Tuesday) March 17 and 18. Ideally, I would like to meet with you on Monday afternoon. Please confirm.

Regards,  
Carlos Mendes

---

**Subject: InterCitrus Patent Matters**

**Date:** Tue, 25 Feb 2003 09:23:35 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

George,

I trust all is well with you. I have not heard from you in a while, nor have I received any materials related to your most recent filings of corrective actions. Also, where are we with respect to the European patent, PCT, and other international patent matters? Will you please update us on the status of these matters. Thanks, and I look forward to hearing from you soon.

Best regards,  
Carlos

**Subject: Re: [Fwd: Fw: InterCitrus Patent Matters]**

**Date:** Wed, 12 Mar 2003 12:11:37 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

**CC:** "L.F. Marcomini" <marcomini@intercitrus.com.br>,  
Ernani Gemignani <ernani@intercitrus.com.br>

**BCC:** Adriano Horta <adriano@terraroja.agr.br>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

George,

Thanks very much. I will see you at your office, on Tuesday, 10:00 a.m. I Look forward to it.

Best regards,  
Carlos Mendes

George Bode wrote:

> Sr. Mendes:  
>  
> I confirm our appointment - TUESDAY, MARCH 18, 2003, @ 10:00 AM @ my office in Lak  
>  
> Vty,  
>  
> George Bode  
>  
> George A. BODE, Esq.  
> BODE & ASSOCIATES, P.C.  
> 500 South Florida Avenue  
> 8th Floor  
> Lakeland, Florida 33801  
>  
> Primary:  
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> Tele: (863) 686-8288  
> Fax: (863) 680-2651  
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> error, please notify the sender by e-mail reply. Thank you.  
>  
> >>> Carlos Mendes <carlosmendes@intercitrus.com.br> 03/12/03 06:58AM >>>  
> George,  
>

**Subject: Re: Meetings Next Week**

**Date:** Fri, 09 May 2003 10:04:03 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

**CC:** Adriano Horta <adriano@terraroja.agr.br> ,

Fernando Horta Jr <fhortajr@terraroja.agr.br> ,

Ron Clark <rclark@ccmattorneys.com> ,

"Joseph P. Mawhinney" <jmawhinney@ccmattorneys.com>

**BCC:** CMN <carlosmendes@intercitrus.com.br>

George,

Thanks for the confirmation. We can start next Wednesday with breakfast, say at Denny's at 7:30 a.m., if you would like. Let me know.

I have herein attached a diagram (**Patent-diagram-03E08.xls**) that shows the origin and evolution of our patents related to the filter itself, and associated filtering concepts. Please check this, and if ok, we will want to use this as a guide for our analyses. I leave Monday night from São Paulo, and should arrive in Lakeland by noon on Tuesday. Stay in touch.

Best regards,  
Carlos

PS: We will together work out the overall strategy and execution plan with Ron and Joe on Wednesday afternoon.

George Bode wrote:

Sr. Mendes:

Confirm meetings all day Wednesday and Thursday, May 14 and 15, 2003.

I also plan to go with you to Coca-Cola in Apopka, if need be, most likely on Thursday, May 15, 2003.

Vty,

GAB

P.S.: With Clark, Campbell & Mawhinney taking on major efforts for InterCitrus, I would prefer if you work out a separate billing arrangement with them when you are next here.

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

B-25

> My agenda has changed somewhat for early next week. Can we meet at 10:00  
> a.m. on Tuesday, March 18th, at your office? Please confirm asap.  
> Thanks.  
>  
> Best regards,  
> Carlos



**Subject: InterCitrus Patent Matters**

**Date:** Thu, 05 Jun 2003 11:01:10 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

Subject: InterCitrus Patent Matters

Date: Tue, 03 Jun 2003 14:35:20 -0300

From: Carlos Mendes <carlosmendes@intercitrus.com.br>

Organization: InterCitrus S.A

To: "G. A. Bode" <gbode@ccmattorneys.com>

CC: Ron Clark <rclark@ccmattorneys.com>, Adriano Horta <adriano@terraroja.agr.br>, Fernando Horta Jr <fhortajr@terraroja.agr.br>

George,

Do you have any news on our pending patent matters? Specifically, and of more urgent interest, we need an update on the following:

1. What is the status of the **P4** patent application (U.22)?
2. What are the status of our other patent applications? In particular what is the status of U.20 (US 09/641,790) and U.21 (US 09/835,919), both of which had the allowable material in August of 2002?
3. Do you have a new Bill for us? Have you prepared (including Clark&Mawhinney) and sent anything? Will you be doing so in the near future? (I have just received a bill for \$5,555.50 from Clark&Mawhinney for their work on the Tropicana patent issue.) Please do so, so that we in turn may remit to you a lump sum.

Please give us an update as soon as possible.

Best regards,  
Carlos Mendes

Fwd: [Fwd: [Fwd: [Fwd: [Fwd: U.22 Patent Application?]]]]]

**Subject:** [Fwd: [Fwd: [Fwd: [Fwd: [Fwd: U.22 Patent Application?]]]]]  
**Date:** Fri, 01 Aug 2003 18:24:10 -0300  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** "G. A. Bode" <gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

---

**Subject:** [Fwd: [Fwd: [Fwd: [Fwd: U.22 Patent Application?]]]]  
**Date:** Wed, 30 Jul 2003 11:34:52 -0300  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** "G. A. Bode" <gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

---

**Subject:** [Fwd: [Fwd: [Fwd: U.22 Patent Application?]]]  
**Date:** Tue, 29 Jul 2003 11:37:40 -0300  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** "G. A. Bode" <gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

---

**Subject:** [Fwd: [Fwd: U.22 Patent Application?]]  
**Date:** Thu, 24 Jul 2003 14:35:35 -0300  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** George Bode <Gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

---

**Subject:** [Fwd: U.22 Patent Application?]  
**Date:** Mon, 21 Jul 2003 17:32:07 -0300  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** "G. A. Bode" <gbode@ccmattorneys.com>

George,

Please let us know the status of U.22 (and others).

Thanks,  
Carlos Mendes

---

B-27

[Fwd: [Fwd: [Fwd: [Fwd: [Fwd: U.22 Patent Application?]]]]]

**Subject: U.22 Patent Application?**

**Date:** Tue, 08 Jul 2003 08:59:45 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>

Good morning George,

Where do we stand with the U.22 patent application? Have you finished the write up? Please send asap.

Thanks,  
Carlos

**Subject: Patent Matters (U.22)**

**Date:** Tue, 26 Aug 2003 15:59:59 -0400

**From:** "George Bode" <Gbode@ccmattorneys.com>

**To:** <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I will be in the office in Lakeland tomorrow and will call you.

A reminder - I am not part of Clark, Campbell, et al. - please do not contact their personnel about Bode & Associates - they have no authority to act on my behalf or access to our files.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288

Fax: (863) 680-2651

Secondary:

Tele: (863) 647-5337

Fax: (863) 647-5012

The information contained in this e-mail transmission is privileged and confidential. If you are not the intended recipient, nor the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this transmission (including any attachments) is strictly prohibited. If you have received this e-mail in error, please notify the sender by e-mail reply. Thank you.

**Subject: Final Notice Regarding Lack of Service**

**Date:** Tue, 26 Aug 2003 17:01:22 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <bodeip@bellsouth.net>, George Bode <Gbode@ccmattorneys.com>

**CC:** Ron Clark <rclark@ccmattorneys.com>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

**BCC:** Adriano Horta <adriano@terraroja.agr.br>, CMN <carlosmendes@intercitrus.com.br>

Araraquara, S.P., Brazil

August 26, 2003

**Advance Copy via e-mail**

Mr. George A. Bode, Esq.  
Bode & Associates  
500 South Florida Avenue - 8th Floor  
Lakeland, Florida 33801 - USA

**Re: Final Notice Regarding Lack of Service**

Dear Mr. Bode,

As outlined in our earlier letter of November 22, 2002, we have continued to experience serious problems in several of our pending patent processes. Since then we have tried to impress upon you the urgent need to resolve these issues. Apparently we have failed, as in the last 6 months, in spite of our appeals to you, we have not been able to get quality and timely service from your firm in regards to our intellectual property matters.

As noted to you earlier, in many e-mail and telephone communications, we have been waiting for 3 months for your filling of our patent application for the P4 Fruit Juice Extractor configuration, your item U.22, and yet, no definitive draft has come from you. Over the last 3 weeks you have repeatedly promised to send us this document, and others related to corrective actions being taken. To this date, we have not received the U.22 document, nor have we received any information that substantiates the fact that this document is being worked on and finalized for submittal to the US Patent Office. Nor have we received notice that other corrective actions are in place, and will be pursued to completion.

Therefore, we are hereby giving you notice that Patent Application U.22 must be satisfactorily finalized and filled by September 2 of next week. If not, consider our verbal service contract with you and your firm to be fully rescinded and void. Should the U.22 Application not be submitted to the USPTO by the September 2nd date, InterCitrus will immediately begin transferring of all of its intellectual property work to a new firm, to be appointed by us at an appropriate time.

Very truly yours,  
Carlos Mendes  
Managing Director



# InterCitrus

Agroindustrial e Comercial S.A.

Araraquara, S.P., Brazil  
August 26, 2003

Mr. George A. Bode, Esq.  
Bode & Associates  
500 South Florida Avenue - 8th Floor  
Lakeland, Florida 33801 - USA

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1	
To	MR. G. A. Bode	From	C. MENDES
Co.	BODE & ASSOC.	Co.	INTERCITRUS
Dept.	CC: MR. RON CLARK	Phone #	55-16-222-2933
Fax #	(863) 647-5012	Fax #	55-16-222-1751

**Re: Final Notice Regarding Lack of Service**

Dear Mr. Bode,

As outlined in our earlier letter of November 22, 2002, we have continued to experience serious problems in several of our pending patent processes. Since then we have tried to impress upon you the urgent need to resolve these issues. Apparently we have failed, as in the last 6 months, in spite of our appeals to you, we have not been able to get quality and timely service from your firm in regards to our intellectual property matters.

As noted to you earlier, in many e-mail and telephone communications, we have been waiting for 3 months for your filling of our patent application for the P4 Fruit Juice Extractor configuration, your item U.22, and yet, no definitive draft has come from you. Over the last 3 weeks you have repeatedly promised to send us this document, and others related to corrective actions being taken. To this date, we have not received the U.22 document, nor have we received any information that substantiates the fact that this document is being worked on and finalized for submittal to the US Patent Office. Nor have we received notice that other corrective actions are in place, and will be pursued to completion.

Therefore, we are hereby giving you notice that Patent Application U.22 must be satisfactorily finalized and filled by September 2 of next week. If not, consider our verbal service contract with you and your firm to be fully rescinded and void. Should the U.22 Application not be submitted to the USPTO by the September 2nd date, InterCitrus will immediately begin transferring of all of its intellectual property work to a new firm, to be appointed by us at an appropriate time.

Very truly yours,

  
Carlos Mendes  
Managing Director

Cc: F.P.L. Horta, Chairman, InterCitrus SA  
Ronald Clark, Esq.

CMN03H26-GBode

B-30

Avenida Engenheiro Camilo Dinucci, 5717 - CEP14.808-100 Araraquara São Paulo Brazil  
- Telephone: 55-16-222-2933 Fax: 55-16-222-1751

**Subject: Location**

**Date:** Thu, 11 Sep 2003 7:11:41 -0400

**From:** <bodeip@bellsouth.net>

**To:** Carlos Mendes <carlosmendes@intercitrus.com.br>

Sr. Mendes:

I am in Pensacola today (Sept. 11) and New Orleans tomorrow (Sept 12).

Will return to Lakeland for Monday, September 15, 2003.

I can call you today - after 12:00 Noon CENTRAL time. Please provide a telephone nu

G. BODE

\

>

> From: Carlos Mendes <carlosmendes@intercitrus.com.br>

> Date: 2003/09/08 Mon PM 05:04:59 EDT

> To: George Bode <bodeip@bellsouth.net>,

> George Bode <Gbode@ccmattorneys.com>

> Subject: Where are You?

>

> George,

>

> I hope all is well with you. What happened, what is happening? Where are  
> you? When, and where can we arrange to talk again?

>

> Regards,

> Carlos

>

>

George A. BODE

BODE & ASSOCIATES

2314 Broadway

New Orleans, Louisiana 70125-4128

Telephone: (504) 861-8288

**Subject: Urgent InterCitrus Patent Matters**

**Date:** Mon, 29 Sep 2003 15:02:12 -0300

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

**CC:** Ron Clark <rclark@ccmattorneys.com>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

**BCC:** Adriano Horta <adriano@terraroja.agr.br>, CMN <carlosmendes@intercitrus.com.br>

Araraquara , S.P., Brazil  
September 29, 2003

**Mr. George A. Bode**

Bode & Associates

500 South Florida Avenue - 8th Floor

Lakeland, Florida 33801 - USA

ADVANCE COPY - Via e-mail

Dear Mr. Bode,

To confirm our understanding from our last telephone conversation, I will next be in Lakeland on October 14, 2003. I will be at your office at 3:00 p.m., to initiate our conversations toward resolving our pending patent and trademark matters. My only priority is to leave with an absolutely firm agreement on a plan of action to resolve expeditiously all pending and open issues with regards to these matters. I will take whatever time is necessary during the week of October 14th, to definitively conclude this plan. I understand that you will also be available during this time to close on all issues.

I have reported to my Board of Directors our understanding, and have assured them that you will be giving this matter your highest priority. Resolving the issues with our patent applications in the USPTO, and other foreign agencies, is of the utmost importance as you well know. I trust you are well on your way to putting in order each and everyone of our patent applications.

I have made an intensive study of our records and files and have identified some critical problems, or issues, in regards to some of our patent applications. Some of these problem applications are the same ones we identified and discussed earlier in our meeting of September 17, 2002. To give you a better understanding of the results of my study, I list below what we believe are the most critical and urgent processes to be resolved successfully:

*Bode Control Number (InterCitrus Control) Number USPTO Application Number Problem Areas  
Corrective Actions*

**U.10** (11, 12 & 13) US. Pat.App. 08/681,622 No action from USPTO - why? Find out status and revive if necessary

**U.11** (14) US. Pat.App. 08/759,724 No action from USPTO - why? Find out status and revive if necessary

**U.12** (15) US. Pat.App. 08/759,723 Allowable Material File ASAP "Petition to Revive

**U.14** (17) US. Pat.App. 08/759,727 Allowable Material File ASAP "Petition to Revive"



- U.15 (18) US. Pat.App. 08/763,679 Allowable Material File ASAP "Petition to Revive  
U.16 (20) US. Pat.App. 08/884,529 No action from USPTO - why? Find out status and revive if necessary  
U.17 (21) US. Pat.App. 09/028,187 I have no record of this document Find out status and revive if necessary  
U.18 (22) US. Pat.App. 09/377,936 No action from USPTO - why? Find out status and revive if necessary  
U.19 (23) US. Pat.App. 09/377,937 No action from USPTO - why? Find out status and revive if necessary  
U.20 (24) US. Pat.App. 09/641,790 Allowable Material File Necessary modifications as requested by examiner by October 3, 2002 ? Done???  
U.20- PCT (Int'l Patent Table 2) US. Pat. App. PCT/ US00/22847 No action from USPTO - why? Find out status and revive if necessary  
U.21 (26) US. Pat.App. 09/835,919 No action from USPTO - why? Find out status and revive if necessary  
U.22 (27) US. Pat.App. To Be Filed Brasil Pat. App. 03004272 filed on Sept. 06, 2003 To be filed asap with the USPTO based on Brasil Pat. App. 03004272

Also, please do not forget, I will need to take possession of the original of our European Patent number EP 0757 896 B1.

Please take, with maximum urgency, the most thorough and complete corrective actions necessary to remedy the problems with our pending applications. I am very concerned, as is my Board, who needs to be reassured that all matters are under control and/or can be quickly and completely rectified so that our intellectual property rights are fully protected under US, and other applicable international law. Please give this matter you utmost priority. I look forward to meeting with you on October 14 to review your progress toward the resolutions of these issues.

Very truly yours,  
Carlos Mendes  
Managing Director  
InterCitrus SA

Cc: F.P.L. Horta  
Ronald Clark, Esq.

CMN03J29-GBode



# InterCitrus

Agroindustrial e Comercial S.A.

Araraquara , S.P., Brazil  
September 29, 2003

**Mr. George A. Bode**  
Bode & Associates  
500 South Florida Avenue - 8th Floor  
Lakeland, Florida 33801 - USA

Dear Mr. Bode,

To confirm our understanding from our last telephone conversation, I will next be in Lakeland on October 14, 2003. I will be at your office at 3:00 p.m., to initiate our conversations toward resolving our pending patent and trademark matters. My only priority is to leave with an absolutely firm agreement on a plan of action to resolve expeditiously all pending and open issues with regards to these matters. I will take whatever time is necessary during the week of October 14th, to definitively conclude this plan. I understand that you will also be available during this time to close on all issues.

I have reported to my Board of Directors our understanding, and have assured them that you will be giving this matter your highest priority. Resolving the issues with our patent applications in the USPTO, and other foreign agencies, is of the utmost importance as you well know. I trust you are well on your way to putting in order each and everyone of our patent applications.

I have made an intensive study of our records and files and have identified some critical problems, or issues, in regards to some of our patent applications. Some of these problem applications are the same ones we identified and discussed earlier in our meeting of September 17, 2002. To give you a better understanding of the results of my study, I list below what we believe are the most critical and urgent processes to be resolved successfully:

<i>Bode Control Number</i>	<i>InterCitrus Control Number</i>	<i>USPTO Application Number</i>	<i>Problem Areas</i>	<i>Corrective Actions</i>
<b>U.10</b>	11, 12 & 13	US. Pat.App. <b>08/681,622</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.11</b>	14	US. Pat.App. <b>08/759,724</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.12</b>	15	US. Pat.App. <b>08/759,723</b>	Allowable Material	File ASAP "Petition to Revive"
<b>U.14</b>	17	US. Pat.App. <b>08/759,727</b>	Allowable Material	File ASAP "Petition to Revive"

Avenida Engenheiro Camilo Dinucci, 5717 - CEP14.808-100 Araraquara São Paulo Brazil  
Telephone: 55-16-222-2933 Fax: 55-16-222-1751

B-32b

# InterCitrus

Agroindustrial e Comercial S.A.

<b>U.15</b>	18	US. Pat.App. <b>08/763,679</b>	Allowable Material	<b>File ASAP "Petition to Revive</b>
<b>U.16</b>	20	US. Pat.App. <b>08/884,529</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.17</b>	21	US. Pat.App. <b>09/028,187</b>	I have no record of this document	Find out status and revive if necessary
<b>U.18</b>	22	US. Pat.App. <b>09/377,936</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.19</b>	23	US. Pat.App. <b>09/377,937</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.20</b>	24	US. Pat.App. <b>09/641,790</b>	Allowable Material	<b>File Necessary modifications as requested by examiner by October 3, 2002 ? Done???</b>
<b>U.20- PCT</b>	Int'l Patent Table 2	US. Pat. App. PCT/ <b>US00/22847</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.21</b>	26	US. Pat.App. <b>09/835,919</b>	No action from USPTO - why?	Find out status and revive if necessary
<b>U.22</b>	27	US. Pat.App. To Be Filed	Brasil <b>Pat. App.</b> <b>03004272</b> filed on Sept. 06, 2003	To be filed asap with the USPTO based on Brasil <b>Pat. App. 03004272</b>

Also, please do not forget, I will need to take possession of the original of our European Patent number **EP 0757 896 B1**.

Please take, with maximum urgency, the most thorough and complete corrective actions necessary to remedy the problems with our pending applications. I am very concerned, as is my Board, who needs to be reassured that all matters are under control and/or can be quickly and completely rectified so that our intellectual property rights are fully protected under US, and other applicable international law. Please give this matter you utmost priority. I look forward to meeting with you on October 14 to review your progress toward the resolutions of these issues.

Very truly yours,

Carlos Mendes  
Managing Director  
InterCitrus SA

Cc: F.P.L. Horta  
Ronald Clark, Esq.

CMN03J29-GBode

Avenida Engenheiro Camilo Dinucci, 5717 - CEP14.808-100 Araraquara São Paulo Brazil  
Telephone: 55-16-222-2933 Fax: 55-16-222-1751

**Subject: Re: InterCitrus Patent Matters**

**Date:** Wed, 26 Nov 2003 15:16:46 -0200

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

George,

This plan would work for me. We can start with a meeting at your Lakeland office on December 16th, say 10:00 a.m., and take it from there. Also, please go ahead and plan for a December 22 or 23 visit with the USPTO in the D.C. area. I will be here in Brazil until December 5th (Friday next week). I will be in California from December 8th through the 13th (when I return to Lakeland late evening). Please keep me updated on your planning and patent work. Talk to you soon.

Best regards,  
Carlos Mendes

George Bode wrote:

Senhor Mendes:

I will be in Lakeland December 15, 2003, and onward.

I plan to go to New Jersey for Christmas visit to my family and perhaps we could meet in Washington, D.C. area before then (December 22 or 23, 2003, looks promising).

We should be able to make more definite plans after our Thanksgiving holiday.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288  
Fax: (863) 680-2651

**Subject: Re: InterCitrus Patent Matters**

**Date:** Mon, 19 Jan 2004 09:31:54 -0200

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>

**CC:** Adriano Horta <adriano@terraroja.agr.br>,  
Fernando Horta Jr <fhortajr@terraroja.agr.br>

Good morning George,

Thank you for the update. Please keep me posted on these matters. I will be in São Paulo tomorrow and Wednesday for my Board meetings, but will be checking on my e-mails. Please keep me posted on these matters, as I will be presenting and discussing these with my Board. Thanks.

Regards,  
Carlos

George Bode wrote:

Sr. Mendes:

I am preparing a package to send to you at work at our Araraquara, Brazil plant.

I have ordered file history of Tropicana Evans, et al. '189 "Juice Extractor" U.S. Patent.

I have made another status inquiry of U.20 and the other pending patents.

I will be ready for your Board meeting next Tuesday morning at 10:00 am in the São Paulo corporate office.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

Primary:

Tele: (863) 686-8288  
Fax: (863) 680-2651

Secondary:

Tele: (863) 647-5337  
Fax: (863) 647-5012

B-34

**Subject: Re: InterCitrus Patent Matters**

**Date:** Tue, 20 Apr 2004 09:55:24 -0700

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** bodeip@earthlink.net

**BCC:** Adriano Horta <adriano@terraroja.agr.br>, CMN <carlosmendes@intercitrus.com.br>, Fernando Horta Jr <fhortajr@terraroja.agr.br>

George,

I have not heard from you for quite a long while, nor have I received any materials by mail. Please let me know the current status of our most pressing matters. Thanks.

Best regards,  
Carlos

GM BODE wrote:

Sr. Mendes:

We keep receiving multiple e-mails - there is only one (1) mail and e-mail address for BODE & ASSOCIATES, as provided at the end of this correspondence.

Please do NOT send e-mail to bodeip@bellsouth.net or gbode@ccmattorneys.com

Further, please do NOT communicate with us through Clark, Campbell & MNawhinney.

I will contact you about an appointment in Lakeland as soon as my travel e is firm.

Vty,

George A. BODE  
BODE & ASSOCIATES, P.C.  
2314 Broadway  
New Orleans LA 70125-4128  
Telephone: (504) 861-8288  
FAX: (504) 866-6717

bodeip@earthlink.net

> [Original Message]

> From: Carlos Mendes <carlosmendes@intercitrus.com.br>

> To: George Bode <bodeip@bellsouth.net>; George Bode <bodeip@earthlink.net>

> Date: 2/20/2004 4:04:20 PM

> Subject: Fwd: InterCitrus Patent Matters => Have you sent info package?

>

>

>

B-35

**Subject: Fwd: InterCitrus Patent Matters => Have you sent info package?**

**Date:** Fri, 20 Feb 2004 18:00:25 -0800

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <bodeip@bellsouth.net>, George Bode <bodeip@earthlink.net>

**BCC:** CMN <carlosmendes@intercitrus.com.br>

---

**Subject: [Fwd: [Fwd: InterCitrus Patent Matters => Have you sent info package?]]**

**Date:** Fri, 13 Feb 2004 18:02:22 -0800

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <bodeip@earthlink.net>

---

**Subject: [Fwd: InterCitrus Patent Matters => Have you sent info package?]**

**Date:** Fri, 13 Feb 2004 15:32:25 -0800

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** "G. A. Bode" <gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

George,

Any news on these matters, and the package? Was it sent???  
Please advise.

Regards,  
Carlos

---

**Subject: Re: InterCitrus Patent Matters => Have you sent info package?**

**Date:** Mon, 02 Feb 2004 18:44:21 -0200

**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>

**Organization:** InterCitrus S.A

**To:** George Bode <Gbode@ccmattorneys.com>, George Bode <bodeip@bellsouth.net>

George,

Any news on these matters, and the package? Was it sent??? Please advise.

Regards,  
Carlos

B-36

Carlos Mendes wrote:

George,

Confirming, I did not receive a package on Sunday at my parents house. I am now back at work at our Araraquara, Brazil plant.

Have you sent anything? Any new developments? What are your plans re U.20 and the other pending patent and trademark issues? I have a Board meeting next Tuesday morning at 10:00 am in the São Paulo corporate office. Please advise.

Regards,  
Carlos

---

**Subject:** Re: InterCitrus Patent Matters  
**Date:** Thu, 06 Nov 2003 15:15:09 -0200  
**From:** Carlos Mendes <carlosmendes@intercitrus.com.br>  
**Organization:** InterCitrus S.A  
**To:** George Bode <Gbode@ccmattorneys.com>  
**CC:** Fernando Horta Jr <fhortajr@terraroja.agr.br>  
**References:** <sfa90ef4.002@NGWNAMESEVER>

George,

Good to hear you received the money. We are now 3 hours ahead of Eastern Standard Time, as we have gone to daylight savings time.

I will be in the US (mostly in Florida) from December 8, 2003 to January 9, 2004. We need to get all the pending patent issues under control and resolved. As we agreed to during our last meeting, I would like to visit the USPTO office in DC, if this help in any way to expedite our processes. Count on and with my total focus on these matters, as I am counting on you to pursue the successful resolution of these issues, with especial and total dedication to U.20. Please keep me posted on your progress.

Best regards,  
Carlos Mendes

George Bode wrote:

CMN:

IC funds received by wire transfer at our bank in New Orleans on 03 November 2003. Clark, Campbell & Mawhinney have been paid in full.

I will be prepared to meet with you in December 2003. Please confirm your itinerary and when you want to meet with me in Lakeland, so that I can match my itinerary to your itinerary.

What is the current time difference? The USA is now on STANDARD TIME.

Vty,

G.A. BODE



**Subject: InterCitrus Patent and Trademark Matters**

**Date:** Fri, 21 May 2004 07:10:01 -0400

**From:** "GM BODE" <bodeip@earthlink.net>

**To:** "Carlos Mendes" <carlosmendes@intercitrus.com.br>

Sr. Mendes:

Confirm our appointment for WEDNESDAY, MAY 26, 2004 @ 11:00 A.M. @ my office - 4202 So. Florida Avenue (across South Florida Avenue from Sheraton Four Points Hotel - not far from the home of your parents).

Vty,

G. BODE

— Original Message —

**From:** Carlos Mendes

**To:** [bodeip@earthlink.net](mailto:bodeip@earthlink.net)

**Cc:** Fernando Horta Jr

**Sent:** 5/20/2004 9:52:50 AM

**Subject:** Re: URGENT Need to Meet to Discuss InterCitrus Patent and Trademark Matters

George,

Let's meet on Wednesday, May 26 at 11:00 a.m. at your office. By the way, what is the location and address of your new office? Have you changed telephone numbers? Please update us on these details.

Regards,  
Carlos

"George A. BODE" wrote:

Sr. Mendes: I will be available in Lakeland May 25 & 26, 2004. Vty, G. BODE George A. BODEBODE & ASSOCIATES, P. C. 2314 Broadway New Orleans LA 70125-4128 Telephone: (504) 861-8288 FAX: (504) 866-6717 [bodeip@earthlink.net](mailto:bodeip@earthlink.net)

— Original Message —

**From:** Carlos Mendes

**To:** George Bode

**Cc:** Fernando Horta Jr

**Sent:** 5/18/2004 10:08:25 AM

**Subject:** URGENT Need to Meet to Discuss InterCitrus Patent and Trademark Matters

**BODE & ASSOCIATES**  
A PROFESSIONAL LAW CORPORATION

PATENT, TRADEMARK & COPYRIGHT ATTORNEYS

**GEORGE A. BODE**  
REG. PATENT ATTORNEY  
U.S. PATENT OFFICE  
(REG. NO. 30,038)

ADMITTED IN LOUISIANA, FLORIDA, NEW JERSEY & COLORADO

OF COUNSEL

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

2314 BROADWAY

NEW ORLEANS 70125-4128

Telephone: (504) 861-8288

Facsimile: (504) 866-6717

PENSACOLA, FLORIDA OFFICE  
(850) 432-8288

LAKELAND, FLORIDA OFFICE  
(941) 686-8288

Friday

August 20, 1999

Sr. Carlos Mendes Neto  
c/o InterCitrus Ltda.  
Rua Voluntarios de Patria, 1738  
CEP 14.801-320  
Araraquara, S.P. BRAZIL

ADVANCE COPY BY FAX  
(55) (16) 222-1751

Re: "Improvements In A Modular Fruit  
Juice Extraction System" (U.18-CIP)  
Continuation-In-Part of:  
U.S. Serial No.: 08/647,066 (U.2)  
Filed: May 9, 1996; and,  
U.S. Serial No.: 08/681,627 (U.4)  
U.S. Serial No.: 08/681,626 (U.6)  
U.S. Serial No.: 08/759,723 (U.12)  
U.S. Serial No.: 08/759,722 (U.13)  
U.S. Serial No.: 08/759,727 (U.14)  
U.S. Serial No.: 08/763,679 (U.15)  
U.S. Serial No.: 08/884,529  
(U.16-CIP)  
U.S. Serial No.: 09/028,187  
(U.17-CIP)

Corresponding to:  
Brazilian App. No.: PI-9502244-9  
Priority Date: June 19, 1995; and,  
Brazil Pat. App. No.: MI5501198-5  
Brazil Pat. App. No.: MU7501779-2  
Brazil Pat. App. No.: MU7502784-4  
Brazil Pat. App. No.: MU7502785-2  
Brazil Pat. App. No.: MU7502786-0  
Brazil Pat. App. No.: MU7502994-4  
Brazil Pat. App. No.: PI9502218-0  
Priority Date: 12 June 1995

Dear Sr. Mendes:

I am happy to inform you that today the continuation-in-part patent application (copy enclosed) for your above-referenced invention was filed by "EXPRESS MAIL" in the U.S. Patent Office. In approximately four (4) weeks we should receive the serial number and confirmation of the filing date.

B-37

Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit  
Juice Extraction System" (U.18-CIP)

Friday  
August 20, 1999  
Page 2

However, since this application is a continuation-in-part it takes the Brazilian priority dates - June 12 and 19, 1995 - as its constructive filing dates with respect to common subject matter.

Our PRO FORMA billing invoice and Statement Of Account for professional services, disbursements and costs to date will follow in due course.

Should you have any further questions or requirements in this regard, feel free to contact me at any time. Until we meet for lunch in Lakeland on Friday, September 17, 1999, I remain,

Very truly yours,  
BODE & ASSOCIATES, P.C.

  
George A. Bode

GAB:bgg  
enclosure  
cc: Sr. Carlos I. Mendes

**BODE & ASSOCIATES**  
A PROFESSIONAL LAW CORPORATION

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**GEORGE A. BODE**  
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U.S. PATENT OFFICE  
(REG. NO. 30,038)  
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NEW ORLEANS 70125-4128  
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(850) 432-8288

LAKELAND, FLORIDA OFFICE  
(941) 686-8288

**OF COUNSEL**

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

Friday  
August 20, 1999

Sr. Carlos Mendes Neto  
c/o InterCitrus Ltda.  
Rua Voluntarios de Patria, 1738  
CEP 14.801-320  
Araraquara, S.P. BRAZIL

ADVANCE COPY BY FAX  
(55) (16) 222-1751

Re: "Configuration For A Self-Cleaning  
Filter For The Extraction Of Fruit  
Juice" (U.19-CIP)

Continuation-In-Part of:

U.S. Serial No.: 08/647,066 (U.2)  
Filed: May 9, 1996; and,  
U.S. Serial No.: 08/681,627 (U.4)  
U.S. Serial No.: 08/681,626 (U.6)  
U.S. Serial No.: 08/759,723 (U.12)  
U.S. Serial No.: 08/759,722 (U.13)  
U.S. Serial No.: 08/759,727 (U.14)  
U.S. Serial No.: 08/763,679 (U.15)  
U.S. Serial No.: 08/884,529  
(U.16-CIP)  
U.S. Serial No.: 09/028,187

(U.17-CIP)

Corresponding to:

Brazilian App. No.: PI-9502244-9  
Priority Date: June 19, 1995; and,  
Brazil Pat. App. No.: MI5501198-5  
Brazil Pat. App. No.: MU7501779-2  
Brazil Pat. App. No.: MU7502784-4  
Brazil Pat. App. No.: MU7502785-2  
Brazil Pat. App. No.: MU7502786-0  
Brazil Pat. App. No.: MU7502994-4  
Brazil Pat. App. No.: PI9502218-0  
Priority Date: 12 June 1995

Dear Sr. Mendes:

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B-38

Re: Sr. Carlos Mendes Neto  
"Configuration For A Self-Cleaning Filter  
For The Extraction Of Fruit Juice" (U.19-CIP)

Friday  
August 20, 1999  
Page 2

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BODE & ASSOCIATES, P.C.



George A. Bode

GAB:bgg  
enclosure  
cc: Sr. Carlos I. Mendes

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(850) 432-8288

LAKELAND, FLORIDA OFFICE  
(941) 686-8288

**OF COUNSEL**

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

Monday  
September 13, 1999

Sr. Carlos Mendes Neto  
c/o InterCitrus Agroindustrial e Comercial S.A.  
Avenida Engenheiro Camilo Dinucci 5717  
CEP 14.808-100  
Araraquara, Saõ Paulo BRASIL

Re: "Improvements In A Modular Fruit  
Juice Extraction System" (U.18-CIP)  
U.S. Serial No.: 09/377,936  
Filed: August 20, 1999  
Continuation-In-Part of:  
U.S. Serial No.: 08/647,066 (U.2)  
Filed: May 9, 1996; and,  
U.S. Serial No.: 08/681,627 (U.4)  
U.S. Serial No.: 08/681,626 (U.6)  
U.S. Serial No.: 08/759,723 (U.12)  
U.S. Serial No.: 08/759,722 (U.13)  
U.S. Serial No.: 08/759,727 (U.14)  
U.S. Serial No.: 08/763,679 (U.15)  
U.S. Serial No.: 08/884,529  
(U.16-CIP)  
U.S. Serial No.: 09/028,187  
(U.17-CIP)

Corresponding to:  
Brazilian App. No.: PI-9502244-9  
Priority Date: June 19, 1995; and,  
Brazil Pat. App. No.: MI5501198-5  
Brazil Pat. App. No.: MU7501779-2  
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Brazil Pat. App. No.: MU7502785-2  
Brazil Pat. App. No.: MU7502786-0  
Brazil Pat. App. No.: MU7502994-4  
Brazil Pat. App. No.: PI9502218-0  
Priority Date: 12 June 1995

Dear Sr. Mendes:

I am happy to inform you that the continuation-in-part patent application (copy previously provided with our letter to you dated August 20, 1999) for your above-referenced invention was filed in the U.S. Patent Office on

Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit  
Juice Extraction System" (U.18-CIP)

Monday  
September 13, 1999  
Page 2

August 20, 1999, and assigned U.S. Serial No. 09/377,936. This application, since it is a continuation-in-part and combination of the nine (9) other above-referenced applications previously filed (our Reference Nos. U.2, U.4, U.6 and U.12 through U.17-CIP; your Item Nos. 1 and 3 - 19), takes the Brazilian priority dates - June 12 and 19, 1995 - as its constructive filing date, with respect to common subject matter only. This new serial number will follow this application throughout its entire life in the U.S. Patent Office. You are free to continue to mark any device made in accordance with this application with the notice

**"U.S. AND FOREIGN PATENT APPLICATIONS PENDING"**

or the like; however, I would recommend that you do NOT use the U.S. serial number as part of the notice as it will only serve to alert your competition to the approximate filing date of your U.S. application which remains **CONFIDENTIAL** in the U.S. Patent Office.

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BODE & ASSOCIATES, P.C.

  
George A. Bode

GAB:bggy  
cc: Sr. Carlos I. Mendes

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LAKELAND, FLORIDA OFFICE  
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**OF COUNSEL**

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

Monday  
September 13, 1999

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c/o InterCitrus Agroindustrial e Comercial S.A.  
Avenida Engenheiro Camilo Dinucci 5717  
CEP 14.808-100  
Araraquara, Sao Paulo BRASIL

Re: "Configuration For A Self-Cleaning  
Filter For The Extraction Of Fruit  
Juice" (U.19-CIP)

U.S. Serial No.: 09/377,937

Filed: August 20, 1999

Continuation-In-Part of:

U.S. Serial No.: 08/647,066 (U.2)

Filed: May 9, 1996; and,

U.S. Serial No.: 08/681,627 (U.4)

U.S. Serial No.: 08/681,626 (U.6)

U.S. Serial No.: 08/759,723 (U.12)

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U.S. Serial No.: 08/884,529

(U.16-CIP)

U.S. Serial No.: 09/028,187

(U.17-CIP)

Corresponding to:

Brazilian App. No.: PI-9502244-9

Priority Date: June 19, 1995; and,

Brazil Pat. App. No.: MI5501198-5

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Brazil Pat. App. No.: PI9502218-0

Priority Date: 12 June 1995

Dear Sr. Mendes:

I am happy to inform you that the continuation-in-part patent application (copy previously provided with our letter to you dated August 20, 1999) for your above-referenced invention was filed in the U.S. Patent Office on



Re: Sr. Carlos Mendes Neto  
"Configuration For A Self-Cleaning Filter  
For The Extraction Of Fruit Juice" (U.19-CIP)

Monday  
September 13, 1999  
Page 2

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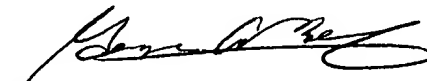
**"U.S. AND FOREIGN PATENT APPLICATIONS PENDING"**

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BODE & ASSOCIATES, P.C.

  
George A. Bode

GAB:bggy  
cc: Sr. Carlos I. Mendes

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A PROFESSIONAL LAW CORPORATION

**PATENT, TRADEMARK & COPYRIGHT ATTORNEYS**

**GEORGE A. BODE**  
REG. PATENT ATTORNEY  
U.S. PATENT OFFICE  
(REG. NO. 30,038)  
ADMITTED IN LOUISIANA, FLORIDA, NEW JERSEY & COLORADO

**2314 BROADWAY**  
**NEW ORLEANS 70125-4128**

**Telephone: (504) 861-8288**

**Facsimile: (504) 866-6717**

**Thursday**

**August 17, 2000**

**PENSACOLA, FLORIDA OFFICE**  
**(850) 432-8288**

**LAKELAND, FLORIDA OFFICE**  
**(941) 686-8288**

**OF COUNSEL**

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

Sr. Carlos Mendes Neto  
c/o InterCitrus Ltda.  
Rua Voluntarios de Patria, 1738  
CEP 14.801-320  
Araraquara, S.P. **BRAZIL**

**ADVANCE COPY BY FAX**  
**(55) (16) 222-1751**

Re: "Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The  
Extraction Of Fruit Juice"  
(U.20-CIP-PCT)

Continuation-In-Part of:

U.S. Serial No.: 08/647,066 (U.2)

Filed: May 9, 1996;

through

U.S. Serial No.: 09/377,937

(U.19-CIP)

Filed: August 20, 1999

Corresponding to:

Brazilian App. No.: PI-9502244-9

Priority Date: June 19, 1995; and,

Brazil Pat. App. No.: MI5501198-5

Brazil Pat. App. No.: MU7501779-2

Brazil Pat. App. No.: MU7502784-4

Brazil Pat. App. No.: MU7502785-2

Brazil Pat. App. No.: MU7502786-0

Brazil Pat. App. No.: MU7502994-4

Brazil Pat. App. No.: PI9502218-0

Priority Date: 12 June 1995

Dear Sr. Mendes:

Please be advised that the Patent Cooperation Treaty (PCT) International Application (identical to the U.S. continuation-in-part application also filed today) for the above-referenced invention was mailed today by U.S. **EXPRESS MAIL** and, therefore, filed today in the PCT Receiving Office of the U.S. Patent Office. Be further advised that this PCT International Application is **NOT** the filing of a patent application in any particular country, but merely a **DESIGNATION** of those countries or groups of countries in which you may eventually file a national or group patent application.

**B-41**

Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The Extraction  
Of Fruit Juice" (U.20-CIP-PCT)

Thursday  
August 17, 2000  
Page 2

The deadline for filing national or group applications is TWENTY (20) MONTHS from the U.S. (priority) filing date of U.18-CIP and U.19-CIP, or, by **APRIL 19, 2001**.

Our FORMAL BILLING invoice and Statement Of Account for professional services, disbursements and costs to date will follow in due course.

Should you have any further questions or requirements in this regard, feel free to contact me at any time. Until we next meet in Lakeland, I remain,

Very truly yours,  
BODE & ASSOCIATES, P.C.



George A. Bode

GAB:bg  
cc: Sr. Carlos I. Mendes

**BODE & ASSOCIATES**  
A PROFESSIONAL LAW CORPORATION

**PATENT, TRADEMARK & COPYRIGHT ATTORNEYS**

**GEORGE A. BODE**  
**REG. PATENT ATTORNEY**  
**U.S. PATENT OFFICE**  
(REG. NO. 30,038)  
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**2314 BROADWAY**  
**NEW ORLEANS 70125-4128**

**Telephone: (504) 861-8288**

**Facsimile: (504) 866-6717**

**Tuesday**  
**September 5, 2000**

**PENSACOLA, FLORIDA OFFICE**  
**(850) 432-8288**

**LAKELAND, FLORIDA OFFICE**  
**(941) 686-8288**

**OF COUNSEL**

**RONALD L. CLARK**  
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CEP 14.801-320  
Araraquara, S.P. **BRAZIL**

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Re: "Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The  
Extraction Of Fruit Juice" (U.20-CIP)  
U.S. Serial No.: 09/641,790  
Filed: August 18, 2000  
Continuation-In-Part of:  
U.S. Serial No.: 08/647,066 (U.2)  
Filed: May 9, 1996;  
through  
U.S. Serial No.: 09/377,937  
(U.19-CIP)  
Filed: August 20, 1999  
Corresponding to:  
Brazilian App. No.: PI-9502244-9  
Priority Date: June 19, 1995; and,  
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Priority Date: 12 June 1995

Dear Sr. Mendes:

I am happy to inform you that the continuation-in-part patent application (copy previously provided with our letter to you dated August 17, 2000) for your above-referenced invention was filed in the U.S. Patent Office on August 18, 2000, and assigned U.S. Serial No. 09/641,790. This application, since it is a continuation-in-part and combination of the eleven (11) other above-referenced applications previously filed (our Reference Nos. U.2, U.4, U.6 and U.12 through U.19-CIP; InterCitrus Item Nos. 1 and 3 - 23(?), takes the Brazilian priority dates - June 12 and 19, 1995 - as its constructive filing date, with respect to **common subject matter only**. This new serial number will follow this application throughout its entire life in the U.S.

Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The Extraction  
Of Fruit Juice" (U.20-CIP)  
U.S. Serial No.: 09/641,790

Tuesday  
September 5, 2000  
Page 2

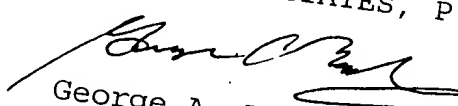
Patent Office. You are free to continue to mark any device made in  
accordance with this application with the notice

**"U.S. AND FOREIGN PATENT APPLICATIONS PENDING"**

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George A. Bode

GAB:bg  
cc: Sr. Carlos I. Mendes

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**NEW ORLEANS 70125-4128**

**Telephone: (504) 861-8288**

**Facsimile: (504) 866-6717**

**Friday**

**September 15, 2000**

**PENSACOLA, FLORIDA OFFICE**  
**(850) 432-8288**

**LAKELAND, FLORIDA OFFICE**  
**(941) 686-8288**

**OF COUNSEL**

**RONALD L. CLARK**  
ADMITTED IN FLORIDA

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Rua Voluntarios de Patria, 1738  
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Araraquara, S.P. **BRAZIL**

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Re: "Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The  
Extraction Of Fruit Juice"  
(U.20-CIP-PCT)

PCT Serial No.: PCT/US00/22847

PCT Filing Date: 18 August 2000

Continuation-In-Part of:

U.S. Serial No.: 08/647,066 (U.2)

Filed: May 9, 1996; through

U.S. Serial No.: 09/377,937

(U.19-CIP)

Filed: August 20, 1999

U.S. Serial No.: 09/641,790

(U.20-CIP)

Filed: August 18, 2000

Corresponding to:

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Priority Date: June 19, 1995; and,

Brazil Pat. App. No.: MI5501198-5

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Brazil Pat. App. No.: MU7502785-2

Brazil Pat. App. No.: MU7502786-0

Brazil Pat. App. No.: MU7502994-4

Brazil Pat. App. No.: PI9502218-0

Priority Date: 12 June 1995

Dear Sr. Mendes:

I am happy to inform you that the Patent Cooperation Treaty (PCT) International Application (identical to the U.S. continuation-in-part application Serial No. 09/641,790, filed August 18, 2000 (our Reference No. U.20-CIP)) for your above-referenced invention was filed in the U.S. Patent Office PCT Receiving Office on August 18, 2000, and assigned PCT Serial No. PCT/US00/22847. This serial number will follow this application throughout

Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit Juice  
Extraction System and Configuration For  
A Self-Cleaning Filter For The Extraction  
Of Fruit Juice" (U.20-CIP-PCT)  
PCT Serial No.: PCT/US00/22847

Friday  
September 15, 2000  
Page 2

its entire life under the PCT. You are free to continue to mark any device made in accordance with this application with the notice

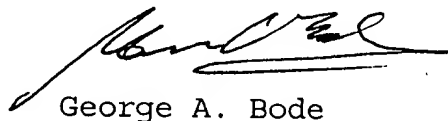
**"U.S. AND FOREIGN PATENT APPLICATIONS PENDING"**

or the like; however, I would recommend that you do **NOT** use the PCT serial number as part of the notice as it will only serve to alert your competition to the approximate filing date of your PCT application which will not be published until a later date.

Be again advised that this PCT International Application is **NOT** the filing of a patent application in any particular country, but merely a **DESIGNATION** of those countries or groups of countries in which you may eventually file a national or group patent application. The deadline for filing national or group applications is TWENTY (20) MONTHS from the U.S. (priority) filing date of U.18-CIP and U.19-CIP, or, by **APRIL 19, 2001**.

Should you have any further questions or requirements in this regard, feel free to contact me at any time. Until we next meet in Lakeland, I remain,

Very truly yours,  
BODE & ASSOCIATES, P.C.



George A. Bode

GAB:bgg  
cc: Sr. Carlos I. Mendes

# **BODE & ASSOCIATES**

A PROFESSIONAL LAW CORPORATION

PATENT, TRADEMARK & COPYRIGHT ATTORNEYS

GEORGE A. BODE  
REG. PATENT ATTORNEY  
U.S. PATENT OFFICE  
(REG. NO. 30,028)

ADMITTED IN LOUISIANA, FLORIDA, NEW JERSEY & COLORADO

4740 CLEVELAND HEIGHTS BOULEVARD NEW ORLEANS OFFICE

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Facsimile: (863) 647-5012

PENSACOLA, FLORIDA OFFICE  
(850) 432-8288

OF COUNSEL

RONALD L. CLARK  
ADMITTED IN FLORIDA

Monday  
May 14, 2001

Sr. Carlos Mendes Neto  
c/o InterCitrus Ltda.  
Avenida Engenheiro Camilo Dinucci 5717  
CEP 14.808-100  
Araraquara, Sao Paulo BRASIL

Re: "Improvements In A Modular Fruit  
Juice Extraction System and  
Configuration For A Self-Cleaning  
Filter For The Extraction Of Fruit  
Juice" (U.21-CIP)

Inventor: Carlos MENDES

U.S. Serial No.: 09/835,919

Filed: April 16, 2001

Continuation-In-Part of:

U.S. Serial No.: 08/647,066 (U.2)

Filed: May 9, 1996;

through

U.S. Serial No.: 09/641,790

(U.20-CIP)

Filed: August 18, 2000

Corresponding to:

Brazilian App. No.: PI-9502244-9

Priority Date: June 19, 1995;

through

Brazil Pat. App. No.: PI9502218-0

Priority Date: 12 June 1995

Dear Sr. Mendes:

**B-44**

I am happy to inform you that the continuation-in-part patent application (copy previously provided with our letter to you dated April 16, 2001) for your above-referenced invention was filed in the U.S. Patent Office on April 16, 2001, and assigned U.S. Serial No. 09/835,919. This application, since



Re: Sr. Carlos Mendes Neto  
"Improvements In A Modular Fruit Juice Extraction System and Configuration  
For A Self-Cleaning Filter For The Extraction Of Fruit Juice" (U.21-CIP)  
U.S. Serial No.: 09/835,919

Monday  
May 14, 2001  
Page 2

it is a continuation-in-part and combination of the twelve (12) other above-referenced applications previously filed (our Reference Nos. U.2, U.4, U.6 and U.12 through U.20-CIP; InterCitrus Item Nos. 1 and 3 - 24(?), takes the Brazilian priority dates - June 12 and 19, 1995 - as its constructive filing date, with respect to **common subject matter only**. This new serial number will follow this application throughout its entire life in the U.S. Patent Office. You are free to continue to mark any device made in accordance with this application with the notice

**"U.S. AND FOREIGN PATENTS & APPLICATIONS PENDING"**

or the like; however, I would recommend that you do **NOT** use the U.S. serial numbers as part of the notice as it will only serve to alert your competition to the approximate filing dates of your U.S. applications which remain **CONFIDENTIAL** in the U.S. Patent Office.

Should you have any further questions or requirements in this regard, feel free to contact me at any time. Until we next meet in Lakeland, I remain,

Very truly yours,  
BODE & ASSOCIATES, P.C.

George A. Bode

GAB:bg

007

**Subject: U.S. Serial No. 09/641,790 (Our Ref: U.20-CIP)**  
**Date: Wed, 17 Jul 2002 10:25:21 -0400**  
**From: "George Bode" <Gbode@ccmattorneys.com>**  
**To: <carlosmendes@intercitrus.com.br>**

**Sr. Mendes:**

I have just received notice from the U.S. Patent office that the above-referenced U.S. patent application has allowable claims - Claims 7 - 17 and 21- 46.

The other claims (Claims 1 - 6 and 18 - 20) have been rejected, so I will study the matter and get back to you.

I will be in Europe during the period July 18 - 30, 2002, so I cannot meet with you during your "Quick Visit" to Lakeland for July 23 - 26, 2002. However, I will leave a copy of the U.S. Patent Office action in this matter action with John Lancaster so that he can pass it on to you when you meet on July 23, 2002.

Vty,

G. BODE

George A. BODE, Esq.  
BODE & ASSOCIATES, P.C.  
500 South Florida Avenue  
8th Floor  
Lakeland, Florida 33801

**Primary:**

**Tele: (863) 802-8442**  
**Fax: (863) 802-9160**

**Secondary:**

**Tele: (863) 647-5337**  
**Fax: (863) 647-5012**

The information contained in this e-mail transmission is privileged and confidential. If you are not the intended recipient, nor the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this transmission (including any attachments) is strictly prohibited. If you have received this e-mail in error, please notify the sender by e-mail reply. Thank you.

**Joe Fischer**

---

**From:** Carlos Mendes [carlosmendes@intercitrus.com.br]  
**Sent:** Wednesday, June 09, 2004 7:25 PM  
**To:** David Maire; Joe Fischer  
**Cc:** Adriano Horta; Fernando Horta Jr; Ron Clark; Natasha Rieger  
**Subject:** InterCitrus IP Firm Selection

Good afternoon Gentlemen,

We have made our decision in regards to our next IP firm. We are happy to say that we have opted to nominate Beusse Brownlee Wolter Mora & Maire as our counsel in these matters. I will soon call you to initiate work on our planned changeover. We trust this is the start of a long and mutually beneficial relationship between our firms.

Best regards,  
Carlos

B-46

10/5/04

# APPENDIX C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: Carlos Neto Mendes

Group Art Unit: 3721

Applicant: Carlos Neto Mendes

Serial No.: 09/028,187

Atty. Dkt.: M-95-3195-U. (old)  
10646-007-U17 (new)

Filed: 02/23/1998

Title: FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION  
MACHINE AND CONFIGURATION OF A PERFORATING  
FILTERING TUBE FOR THE EXTRACTION OF FRUIT JUICES AND  
CONFIGURATION OF A CONCAVE AND RADially CUT  
HEMISPHERE FOR THE CUTTING AND PRESSING OF FRUIT FOR  
THE EXTRACTION OF JUICES

Assistant Commissioner for Patents  
P.O. Box 1450  
Washington, DC 20231-450

DECLARATION OF CARLOS NETO MENDES  
TO ACCOMPANY STATEMENT SENT WITH PETITION TO REVIVE  
UNINTENTIONALLY ABANDONED PATENT APPLICATION

1. I, Carlos Neto Mendes, a citizen of The United States of America  
(since 1999), hereby declare and state as follows:

2. I have communicated by telephone, e-mail, and mail, and have had  
in-person meetings with my former patent attorney, Mr. George Bode between  
1995 and 2004. For a period of time preceding mid-2002, I was concerned with  
the slowness of correspondence from the United States Patent and Trademark  
Office ("Patent Office"). When I expressed my concern to Mr. Bode, Mr. Bode  
told me that this was because the Patent Office had slowed down due to factors  
related to post-9/11 security measures. At that time I believed Mr. Bode's  
explanation for the slowness, and was satisfied with the legal services provided  
by Mr. Bode.



3. I received an e-mail from Mr. Bode dated July 17, 2002 regarding U.S. patent application number 09/641,790, which indicated that Mr. Bode would leave a copy of the Office action referred to in the e-mail for me to pick up in Lakeland, Florida. However, no Office action copy was in that office for me to pick up.

4. During the period between July and August 2002, prior to hearing from Mr. Polk (see below), based on communications from Mr. Bode, I believed that a patent would soon issue from U.S. patent application serial number 09/641,790. Also, it was my understanding that this application claimed priority to a number of previous applications, including the present application.

5. On August 13, 2002 I received a telephone call from Mr. Edward Polk, who identified himself as being with The Office of The Solicitor of the USPTO, indicating that a number of patent applications, including the present application, had gone abandoned, and that Mr. Bode was under investigation by his office. I spoke with Mr. Polk again on August 16, 2002, when he told me that my application 09/377,936 had gone abandoned and was no longer valid. I became concerned about the status of all of my pending applications and my patent protection in the United States. I knew that some applications had properly gone abandoned after a later-filed application had been filed, but the list from Mr. Polk included applications that I believed should have been pending.

6. On August 20, 2002, I telephoned Mr. Bode and communicated to him what Mr. Polk had told me. Mr. Bode first told me that what Mr. Polk stated must be a mistake and he would look into the matter. On August 26, 2002 I again called Mr. Polk, of The Office of The Solicitor, and he once again confirmed that many of my patent applications had gone abandoned, some for lack of action or response from my attorney Mr. Bode. Mr. Polk also stated that "Petitions to Revive" would be needed to be filed in order to revive specific




applications that were not supposed to have gone abandoned. On September 3, 2002, I again called Mr. Bode, who said that he was still looking into the matter, but still believed that the USPTO must have made some mistakes in regards to applications that should not have gone abandoned. On September 17, and again on September 21, 2002 I met with Mr. Bode at his office in Lakeland, Florida. At these meetings Mr. Bode began to agree to the fact that indeed some errors were made, probably inside the USPTO, and that perhaps some applications have unintentionally gone abandoned. Thereafter, when the abandonment of certain applications was confirmed, Mr. Bode then stated that mistakes had in fact been made, and he assured me that he would file for revival of applications that needed to be revived. Thereafter, in telephone conversations and during meetings on December 11 and 19 of 2002, Mr. Bode assured me repeatedly that he had filed the revival documents that needed to be filed, so that he had taken care of the patent applications that we wanted to be pending with corrective actions as needed. At all times Mr. Bode also stated that he could not understand why the Patent Office was so slow in responding.

7. Throughout the year of 2003 I had several meetings and telephone conversations regarding my patent and trademark matters. I met personally with Mr. Bode on January 7, January 31, March 18 and May 14 of 2003. I called Mr. Bode on May 24, 2003, as well as sending him several e-mails in regards to inquiring about the status of my various applications. He always assured me that all papers necessary had been filed, and that he was following up on all applications. I continued to meet with Mr. Bode in 2003, including meetings on October 16 and 20, and on December 17 and 19. As before, Mr. Bode assured me that all was in order, but that the USPTO was still slow in these matters, so I needed to wait some more. I met with Mr. Bode in January 6 and 10 of 2004, and once again on March 23, 2004. There were no positive developments and yet, Mr. Bode still confirmed to me that all matters were properly taken care of and that it was just a matter of waiting for the appropriate action from the USPTO. On March 24 of 2004 I began to search for new council in order to replace Mr. Bode,

this time without any comments of possible changes in counsel. Previously, when I had indicated to Mr. Bode that I was going to seek new counsel, Mr. Bode said that he understood the pressure I was under, but he was doing all he could and it was just question of waiting for the USPTO to respond.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or of any patent issuing there from.

Dated: OCT. 27, 2004 By:   
Carlos Neto Mendes



# APPENDIX D



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,790	08/18/2000	Carlos Neto Mendes	M-95-3195-U.20-CIP	7305

7590 07/03/2002  
George A Bode  
Bode & Associates PC  
2314 Broadway  
New Orleans, LA 70125-4128

RECEIVED  
BODE & ASSOCIATES, P.C.

JUL 12 2002

BY: \_\_\_\_\_

EXAMINER	
GERRITY, STEPHEN FRANCIS	
ART UNIT	PAPER NUMBER

3721

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

BUCKET STAMP: *mendes, C. N-IC (4.20 CIP)*  
CLIENT: \_\_\_\_\_  
NATURE OF OIA *Resp*  
TIME FOR RESPONSE *3 mo*  
FILED ON *12 July 2002*  
(CLERK) *GAB*  
*03 Oct 2002*  
DATE MAILED ON \_\_\_\_\_ BY \_\_\_\_\_

**Office Action Summary**

Application No.

09/641,790

Applicant(s)

MENDES, CARLOS NETO

Examiner

Stephen F. Gerrity

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-17, 21-26 and 28-46 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. as per schedule A.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Priority***

- 1.** Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must be copending with the prior application or with an application similarly entitled to the benefit of the filing date of the prior application.

- 2.** This application is not entitled to the benefits of 35 U.S.C. 120 for the earlier filed US applications 08/647,066; 08/681,627; 08/681,626; 08/759,723; 08/759,722; 08/759,727; 08/763,679; 08/884,529; and 09/028,187. These earlier filed US applications were not copending with earlier filed US applications 09/377,936 and 09/377,937. The chain of copendency is broken between the filing of the 09/377,936 and 09/377,937 applications and the pendency of application 09/028,187.

- 3.** This application is likewise not entitled to the benefits of 35 U.S.C. 119 because the earlier filed US applications 08/647,066; 08/681,627; 08/681,626; 08/759,723; 08/759,722; 08/759,727; 08/763,679; 08/884,529; and 09/028,187 (in which priority under 35 U.S.C. 119 was claimed) were not copending with earlier filed US applications 09/377,936 and 09/377,937. Additionally, the filing dates of the foreign applications are

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each more than one year prior to the US filing date of this application as well as earlier filed US applications 09/377,936 and 09/377,937.

4. Applicant is required to cancel the references to the earlier filed applications 08/647,066; 08/681,627; 08/681,626; 08/759,723; 08/759,722; 08/759,727; 08/763,679; 08/884,529; and 09/028,187 from the specification. Likewise, applicant is required to cancel the references to the foreign applications. Correction is required, unless some corrective action is taken to make the earlier filed US applications 08/647,066; 08/681,627; 08/681,626; 08/759,723; 08/759,722; 08/759,727; 08/763,679; 08/884,529; and 09/028,187 copending with this application.

### ***Specification***

5. The abstract of the disclosure is objected to because it is of excessive length. Correction is required. See MPEP § 608.01(b).

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be

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implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

**7.** The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

**8.** The disclosure is objected to because of the following informalities:

- a.** pages 15 and 16, the brief drawing description for figure 1 is of excessive length;
- b.** page 16, lines 19 and 20, the expression "LINE A-A (OR "VISTA A-A")" needs to be changed to --LINE 2-2--;
- c.** page 22, line 19, "cuts" should be --cut--;
- d.** page 25, line 3, "the" (first occurrence) should be changed to --then--;
- e.** page 25, line 12, "cuts" should be --cut--;
- f.** page 31, lines 2 and 3, parentheses are needed around the numbers;
- g.** page 32, line 22, "cuts" should be --cut--;
- h.** page 34, lines 20 and 21, parentheses are needed around the numbers; and
- i.** page 37, line 3, "cuts" should be --cut--.

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Appropriate correction is required.

**9.** The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the central pin mentioned in claims 11 and 14 lacks proper antecedent basis in the written description.

### ***Drawings***

**10.** This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

**11.** The drawings are objected to because:

- a.** in figure 1, the view line "A-A" must be changed to --2-2--;
- b.** in figure 2, the expression "VISTA A-A" must be deleted;
- c.** in figure 4, the view line "A-A" must be changed to --5-5--;
- d.** in figure 5, the expression "VISTA A-A" must be deleted;
- e.** in figures 6 and 7, "Device 7" (as mentioned at page 28, line 11) should be labeled;
- f.** in figure 6, the expression "DETAIL A" must be deleted;
- g.** in figure 7, the view line "DETAIL A" must be changed to --6--;
- h.** in figure 8, the view line "B-B" must be changed to --9-9--; and

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- i. in figure 9, the expression "CUT BB" must be deleted.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

**12.** The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "central pin" (mentioned in claims 11 and 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

**13.** Claim 27 is objected to because a transitional phrase such as "wherein" appears to be missing in line 1 before the words "channel means".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

**14.** The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.



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**15.** Claims 1-6 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. These claims are omnibus type claims.

***Claim Rejections - 35 USC § 102***

**16.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**17.** Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mendes (**EP 0757896**).

***Allowable Subject Matter***

**18.** Claims 7-17, 21-26 and 28-46 are allowed.

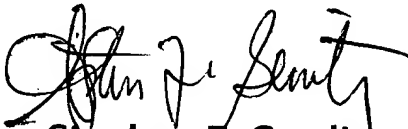
**19.** Claim 27 is objected to, but would be allowable if rewritten to overcome the objection set forth above in this Office action.

***Conclusion***

**20.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references set forth on the attached form PTO-892 are cited to show juice extracting and presses. All are cited as being of interest and to show the state of the prior art.

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**21.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Stephen Gerrity**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rinaldi Rada**, may be contacted. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Group 3720** receptionist.



**Stephen F. Gerrity**  
**Primary Examiner**  
**Art Unit 3721**

Examiner's Telephone Number: (703) 308-1279  
Examiner's Regular Schedule: Mon-Fri 6:30-3:00  
Supervisor's Telephone Number: (703) 308-2187  
Receptionist's Telephone Number: (703) 308-1148  
Facsimile Telephone Numbers: (703) 872-9302  
(703) 872-9303 [after final only]

1-Jul-02

<b>Notice of References Cited</b>	Application/Control No. 09/641,790	Applicant(s)/Patent Under Reexamination MENDES, CARLOS NETO	
	Examiner Stephen F. Gerrity	Art Unit 3721	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-2,116,325-A	05-1938	Rogers	100/108
	B	US-2,346,561-A	04-1944	Delay	100/108
	C	US-2,420,679-A	05-1947	Pipkin	100/108
	D	US-2,534,554-A	12-1950	Kahre	100/98R
	E	US-2,856,846-A	10-1958	Belk	100/108
	F	US-3,162,114-A	12-1964	Quiroz	100/108
	G	US-3,269,301-A	08-1966	Krause	100/108
	H	US-3,682,092-A	08-1972	Breton et al.	100/108
	I	US-4,154,163-A	05-1979	Niemann	100/108
	J	US-4,376,409-A	03-1983	Belk	100/108
	K	US-4,459,906-A	07-1984	Cound et al.	100/98R
	L	US-4,951,563-A	08-1990	Warren et al.	100/213
	M	US-5,720,218-A	02-1998	Mendes	100/108

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	EP-0757896-A1	02-1997	Eur. Pat. Off.	Mendes	--
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

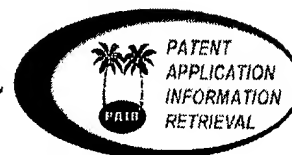
*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

# **APPENDIX E**

Summary for Teleconference July 16, 2004 CONFIDENTIAL AND ATTORNEY/CLIENT PRIVILEGED INFORMATION

Application Serial No.	Internal Docket	Status	Next Actions
08/647,066	U.2	Issued as U.S. 5,655,441	Next maintenance fee due 12 August 2004.
08/681,627	U.4	Issued as U.S. 5,720,218	Next maintenance fee due 24 February 2005.
08/681,626	U.6	Issued as U.S. 5,802,964	Next maintenance fee due 8 September 2005.
08/759,724	U.11	Abandoned for failure to respond to 30 April 1997 Office action. This regards configuration of concave and radially cut hemisphere.	Determine need to and basis for petition for revival.
08/759,722	U.13	Issued as U.S. 5,720,219	Next maintenance fee due 24 February 2005.
Title: "Dispositivo Clasificador de Frutas Citricas e Congeneres"	No "U" designation given. This is item # 22.	No record of this having been filed.	Determine whether the subject matter was included in a later application.
09/028,187	U.17	Application went abandoned, apparently before filing of U.18 and U.19.	Obtain support for basis of filing, and file Petition to Revive application. This revival is needed to fill a gap in priority asserted by Examiner in U.20(CIP).
09/641,790	U.20 (CIP)	Application went abandoned January 2003 for failure to respond to Office action. 36 claims allowed; two claims rejected based on Mendes EPO published application.	Obtain support for basis of filing, and file Petition to Revive application.
09/835,919	U.21-CIP	Application went abandoned in pre-examination due to no Response to Notice of Incomplete Application (based on alleged lack of Abstract and drawings, both of which are in our copy of application as filed).	If USPTO made an error, we can file a Petition to Withdraw Abandonment. Otherwise, we are researching whether a Petition to Revive may revive an incomplete application. If yes, then we would obtain support for basis of filing, and file Petition to Revive application.

**PATENT APPLICATION INFORMATION RETRIEVAL**

Search results as of: 8-8-2004::14:0:8 E.T.

Search results for application number: 09/028,187			
Application Number:	09/028,187	Customer Number:	29391
Filing or 371(c) Date:	02-23-1998	Status:	Abandoned -- Failure to Respond to an Office Action
Application Type:	Utility	Status Date:	10-29-1999
Examiner Name:	GERRITY, STEPHEN FRANCIS	Location:	FILE REPOSITORY (FRANCONIA)
Group Art Unit:	3721	Location Date:	08-05-2004
Confirmation Number:	4315	Earliest Publication No:	-
Attorney Docket Number:	M-95-3195-U.	Earliest Publication Date:	-
Class/ Sub-Class:	100/110	Patent Number:	-
First Named Inventor:	CARLOS NETO MENDES, ARARAQUARA, (BR)	Issue Date of Patent:	-
Title Of Invention:	FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION MACHINE		

## Search Options

<a href="#">Continuity Data</a>
<a href="#">Foreign Priority</a>

File History	
Date	Contents Description
08-04-2004	Correspondence Address Change
08-04-2004	Change in Power of Attorney (May Include Associate POA)
10-29-1999	Mail Abandonment for Failure to Respond to Office Action
10-29-1999	Abandonment for Failure to Respond to Office Action
03-30-1999	Mail Final Rejection (PTOL - 326)
03-29-1999	Final Rejection
03-16-1999	Date Forwarded to Examiner
02-17-1999	Response after Non-Final Action
02-17-1999	Incoming Letter Pertaining to the Drawings
11-13-1998	Mail Non-Final Rejection
11-09-1998	Non-Final Rejection
07-22-1998	Case Docketed to Examiner in GAU
07-14-1998	Transfer Inquiry
06-02-1998	Application Dispatched from OIPE
06-02-1998	IFW Scan & PACR Auto Security Review
03-02-1998	Initial Exam Team nn

## Joe Fischer

---

**From:** David Maire [dmair@iplawfl.com]  
**Sent:** Monday, June 28, 2004 1:48 PM  
**To:** Carlos Mendes  
**Cc:** Joe Fischer  
**Subject:** meeting with Bode

Carlos,

Joe and I just returned from Lakeland and our "meeting" with George Bode. I'm not sure that our encounter can really be called a meeting, since it was very brief. I had told George that we would go over the InterCitrus files with him, concentrating on files with near-term actions due. When we arrived at his office, he simply handed us three boxes of files and said that he had to leave immediately for an appointment. When we tried to ask a few questions, he repeatedly said "its in the files." He gave us no docketing report showing actions due, although he did state that "there are no actions due on any of the US applications."

Mr. Bode's actions were very abrupt and non-accommodating. It appears to me that he does not want to cooperate with us.

We will proceed to review the materials that we received to confirm that we have all of the files and to identify any actions due. Joe will soon be sending you Power of Attorney forms to sign so that we can represent you before the US Patent Office, and we will be notifying the foreign agents of our replacement of Mr. Bode.

We will remain in touch...

Dave

DAVID G. MAIRE  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 North Orange Ave., Suite 2500  
Orlando, FL 32801  
telephone: 407-926-7704  
facsimile: 407-926-7720  
e-mail: dmair@iplawfl.com

E-3

## Grayce Lichtenberger

---

**From:** Grayce Lichtenberger [glichtenberger@iplawfl.com]  
**Sent:** Wednesday, August 04, 2004 4:28 PM  
**To:** efoia@uspto.gov  
**Cc:** Joe Fischer  
**Subject:** FOIA REQUEST

**Importance:** High

THIS REQUEST IS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

Please provide us with copies of all public documents relating to the OED's Final Disciplinary Decision regarding the Respondent, George Bode. We checked on-line for this information, but the list of Respondents has not been updated since April 2004 and, therefore, does not include the information we are looking for.

Please provide the copies/information to the undersigned. As we represent a client who formerly retained the services of Mr. Bode as his attorney, there is some urgency to our request. PLEASE ADVISE BY REPLY E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS.

Thank you for your assistance in this regard.

Grayce A. Lichtenberger  
Assistant to Joseph Fischer  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com

E-4



EFOIA

04-254

**From:** Grayce Lichtenberger [glichtenberger@iplawfl.com]  
**Sent:** Wednesday, August 04, 2004 4:28 PM  
**To:** EFOIA  
**Cc:** Joe Fischer  
**Subject:** FOIA REQUEST

OFFICE OF THE  
GENERAL COUNSEL  
2004 AUG -5 AM 7:33  
U.S. PATENT  
AND  
TRADEMARK OFFICE

**Importance:** High

THIS REQUEST IS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

Please provide us with copies of all public documents relating to the OED's Final Disciplinary Decision regarding the Respondent, George Bode. We checked on-line for this information, but the list of Respondents has not been updated since April 2004 and, therefore, does not include the information we are looking for.

Please provide the copies/information to the undersigned. As we represent a client who formerly retained the services of Mr. Bode as his attorney, there is some urgency to our request. PLEASE ADVISE BY REPLY E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS.

Thank you for your assistance in this regard.

Grayce A. Lichtenberger  
Assistant to Joseph Fischer  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com

E-4



RECEIVED

AUG 09 2004

BEUSSE & WOLTER  
MORA & MAIRE, P.A.

---

**UNITED STATES PATENT AND TRADEMARK OFFICE**

OFFICE OF THE GENERAL COUNSEL

Dear Sir/Madam:

Your Freedom of Information Act (FOIA) request was received by the Office of the General Counsel on 8/5/04

Your request has been docketed as "FOIA Request No. 04-254." Any further inquiries regarding your request should include that number. A copy of your request is attached for reference.

In the event your original request was incorrectly addressed, please address all inquiries regarding your request to:

FREEDOM OF INFORMATION ACT CONTROL DESK  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sincerely,

Robert Fawcett  
Paralegal Specialist

E-4

## Grayce Lichtenberger

---

**From:** Grayce Lichtenberger [glichtenberger@iplawfl.com]  
**Sent:** Tuesday, August 10, 2004 2:29 PM  
**To:** efoia@uspto.gov  
**Cc:** Joe Fischer  
**Subject:** FOIA REQUEST NO. 04-254 - REPLY REQUESTED

**Importance:** High

Dear Sir/Madam,

This is regarding FOIA Request No. 04-254, which request was initially received from us by the Office of the General Counsel on August 5, 2004.

PLEASE ADVISE ASAP BY RETURN E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS. The requested copies/information may be useful to us in requesting revival of several patent applications for a client that Mr. Bode used to represent.

Thank you for your assistance in this respect.

Grayce A. Lichtenberger  
Assistant to Joseph Fischer  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com

E-4

## Grayce Lichtenberger

---

**From:** EFOIA [EFOIA@USPTO.GOV]  
**Sent:** Wednesday, August 11, 2004 7:02 AM  
**To:** Grayce Lichtenberger  
**Subject:** RE: FOIA REQUEST NO. 04-254 - REPLY REQUESTED

"[A]n initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the receipt of a request for a record under this part by the proper FOIA Officer identified in accordance with Sec. 102.5(a) . . . ." See 37 C.F.R. Sec. 102.6(b).

-----Original Message-----

**From:** Grayce Lichtenberger [mailto:glichtenberger@iplawfl.com]  
**Sent:** Tuesday, August 10, 2004 2:29 PM  
**To:** EFOIA  
**Cc:** Joe Fischer  
**Subject:** FOIA REQUEST NO. 04-254 - REPLY REQUESTED  
**Importance:** High

Dear Sir/Madam,

This is regarding FOIA Request No. 04-254, which request was initially received from us by the Office of the General Counsel on August 5, 2004.

PLEASE ADVISE ASAP BY RETURN E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS. The requested copies/information may be useful to us in requesting revival of several patent applications for a client that Mr. Bode used to represent.

Thank you for your assistance in this respect.

Grayce A. Lichtenberger  
Assistant to Joseph Fischer  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com

E-4



RECEIVED

SEP 09 2004

BEUSSE BROWNLEE WOLTER  
MORA & MAIRE, P.A.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

SEP - 2 2004

GENERAL COUNSEL

Ms. Grayce A. Lichtenberger  
Beusse Brownlee Wolter Mora  
& Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, FL 32801

Re: Freedom of Information Act (FOIA) Request No. 04-254

Dear Ms. Lichtenberger:

This is in response to your e-mail dated August 4, 2004, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, a copy of: "all public documents relating to the OED's Final Disciplinary Decision regarding the Respondent, George Bode."

The U.S. Patent and Trademark Office (USPTO) indexes and makes available for public inspection and copying all files concerning final agency decisions. 5 U.S.C. § 552(a)(2); 37 CFR § 1.10.159(c).

Because these files are indexed and open to public inspection, they are not available under the FOIA. FOIA applies only to documents that are not otherwise publicly available. Schwarz v. United States Patent and Trademark Office, No. 95-5349, 1996 U.S. App. LEXIS 4609 at 2-3 (D.C. Cir. 1996); Comer v. Internal Revenue Service, U.S. Dist. LEXIS 16268 (E.D. Mi., Sept. 30, 1999); Crews v. Internal Revenue, No. 99-8388, slip. op. At 11-12 (C.D. Cal. Apr. 26, 2000).

Practitioner disciplinary proceeding records are available for public inspection at the USPTO Office for Enrollment and Discipline. They may be contacted at (703) 306-4097. The final decisions are posted at [www.uspto.gov](http://www.uspto.gov).

The processing fee for this FOIA request has been waived. See 37 C.F.R. § 102.11(d)(4).

Sincerely,

Robert Fawcett  
Paralegal Specialist

E-5

## Grayce Lichtenberger

---

**From:** Grayce Lichtenberger [glichtenberger@iplawfl.com]  
**Sent:** Thursday, September 30, 2004 3:23 PM  
**To:** efoia@uspto.gov  
**Cc:** David Maire  
**Subject:** FOIA REQUEST - Proceeding No. D02-14

**Importance:** High

THIS REQUEST IS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

Please provide us with copies of all documents relating to the OED's disciplinary decisions regarding the Respondent, George Bode, including, but not limited to, the Initial Decision for Proceeding No. D02-14. We explicitly exclude from this Request a copy of the Final Decision, which is now available on-line, but would like copies of all other documents in the files relating to any disciplinary matter related to Mr. George Bode.

Please provide the copies/information to the undersigned. As we represent a client who formerly retained the services of Mr. Bode as his attorney, there is some urgency to our request. PLEASE ADVISE BY REPLY E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS.

Thank you for your assistance in this regard.

Grayce A. Lichtenberger  
At Request of David G. Maire  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com

E-6

## EFOIA

From: Grayce Lichtenberger [glichtenberger@iplawfl.com]  
Sent: Thursday, September 30, 2004 3:23 PM  
To: EFOIA  
Cc: David Maire  
Subject: FOIA REQUEST - Proceeding No. D02-14

OFFICE OF THE  
GENERAL COUNSEL

2004 OCT -1 AM 7:47

Importance: High

U.S. PATENT  
AND  
TRADEMARK OFFICE

THIS REQUEST IS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

Please provide us with copies of all documents relating to the OED's disciplinary decisions regarding the Respondent, George Bode, including, but not limited to, the Initial Decision for Proceeding No. D02-14. We explicitly exclude from this Request a copy of the Final Decision, which is now available on-line, but would like copies of all other documents in the files relating to any disciplinary matter related to Mr. George Bode.

Please provide the copies/information to the undersigned. As we represent a client who formerly retained the services of Mr. Bode as his attorney, there is some urgency to our request. PLEASE ADVISE BY REPLY E-MAIL HOW LONG IT WILL TAKE TO GRANT OUR REQUEST FOR RECORDS..

Thank you for your assistance in this regard.

Grayce A. Lichtenberger  
At Request of David G. Maire  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com



**UNITED STATES PATENT AND TRADEMARK OFFICE**

OFFICE OF THE GENERAL COUNSEL

Dear Sir/Madam:

Your Freedom of Information Act (FOIA) request was received by the Office of the General Counsel on 10-1-04

Your request has been docketed as "FOIA Request No. 05-061." Any further inquiries regarding your request should include that number. A copy of your request is attached for reference.

In the event your original request was incorrectly addressed, please address all inquiries regarding your request to:

FREEDOM OF INFORMATION ACT CONTROL DESK  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sincerely,

A handwritten signature in black ink, appearing to be "R. Fawcett", is written over a horizontal line.

Robert Fawcett  
Paralegal Specialist

E-6





RECEIVED

NOV 01 2004

BEUSSE BROWNLEE WOLTER  
MORA & MAIRE, P.A.

UNITED STATES PATENT AND TRADEMARK OFFICE

GENERAL COUNSEL

OCT 27 2004

Ms. Grayce A. Lichtenberger  
Beusse Brownlee Wolter Mora  
& Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, FL 32801

Re: Freedom of Information Act (FOIA) Request No. 05-001

Dear Ms. Lichtenberger:

The Office of the General Counsel received your letter requesting, under the Freedom of Information Act (5 U.S.C. § 552) a copy of: "all documents relating the OED's disciplinary decisions regarding the Respondent, George Bode, including but not limited to, the Initial Decision for Proceeding No. D02-14."

Preliminary estimates indicate that the approximate processing cost of this FOIA request is **\$662.00**. This estimate includes estimated review time of approximately 16 only. Associated copying charges cannot be estimated until a final determination regarding releasability is made.

This estimate does not necessarily represent the final cost. Estimates are inherently imprecise, and the final cost could be higher or lower than the amount provided here. However, the estimate provided herein is reasonably calculated to represent search costs required to adequately respond to your request.

As a commercial use FOIA requester, you are responsible for the costs involved in search, review and duplication. See 37 C.F.R. § 102.11(c)(1)(i).

Please note that a search fee is chargeable even when no responsive records are found, or when the records requested are determined to be totally exempt from disclosure. See 37 C.F.R. § 102.11(c)(3)(i).


Requestors must pay the entire anticipated fee before the Agency begins processing a request when the fee estimate exceeds \$250.00. See 37 C.F.R. § 102.11(i)(2).

Please remit, within 30 calendar days of the date of this letter, a check made payable to the "Department of Treasury" in the amount of **\$662.00**. The payment must be sent to:

United States Patent and Trademark Office  
Freedom of Information Act Officer  
Office of the General Counsel  
P.O. Box 1450  
Alexandria, VA 22313-1450

If payment in the full amount of the initial estimate is not received by November 26, 2004, this request will be considered withdrawn and closed.

Sincerely,



Robert Fawcett  
Program Analyst

## Grayce Lichtenberger

---

**From:** Grayce Lichtenberger [glichtenberger@iplawfl.com]  
**Sent:** Wednesday, November 03, 2004 4:06 PM  
**To:** efoia@uspto.gov  
**Cc:** Joe Fischer  
**Subject:** FOIA REQUEST NO. 05-001

**Importance:** High

THIS REQUEST IS MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

We are in receipt of your correspondence dated October 27, 2004, and, accordingly, wish to modify our request. Please provide us with a copy of ONLY the Initial Decision for Proceeding No. D02-14. Please let us know the cost for this copy.

Thank you for your assistance in this regard.

Grayce A. Lichtenberger  
At Request of David G. Maire  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. North Orange Avenue  
Suite 2500  
Orlando, Florida 32801  
Telephone: (407) 926-7715  
Fax: (407) 926-7720  
glichtenberger@iplawfl.com



Certificate of Mailing

I hereby certify that this correspondence is being  
Deposited with the United States Postal Service as  
First Class Mail in an envelope addressed to:  
Assistant Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450 on 11-4-2004.

Grayce A. Lichtenberger  
Grayce A. Lichtenberger

**RECEIVED**  
NOV 12 2004  
OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: : Carlos Neto Mendes  
Examiner : S.F. Gerrity  
Art Unit : 3721  
Docket No. : M-95-3195-U.17-CIP (new docket number 10646-007)  
Serial No. : 09/028,187  
Filed : February 23, 1998  
For: : FILTERING DEVICE FOR A CITRUS JUICE EXTRACTION  
MACHINE AND CONFIGURATION OF A PERFORATING  
FILTERING TUBE FOR THE EXTRACTION OF FRUIT JUICES AND  
CONFIGURATION OF A CONCAVE AND RADIALY CUT  
HEMISPHERE FOR THE CUTTING AND PRESSING OF FRUIT FOR  
THE EXTRACTION OF JUICES

Commissioner for Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

REPLY UNDER 37 CFR 1.116 TO FINAL OFFICE ACTION MAILED BY  
PATENT EXAMINER MARCH 30, 1999

This Reply is in response to the Final Office Action mailed in the captioned application on  
March 30, 1999. That Office Action provided a shortened statutory period of three months.

This Reply is provided with a Petition to Revive the application. In accordance with MPEP 711.03(c)II.A., a petition for an extension of time under 37 CFR 1.136 and a fee for such an extension of time are not required to be included with this Reply when submitted with a Petition to Revive, so no such fee is provided herewith.

Amendments to the Specification begin on page 3.

Remarks begins on page 5.

**Amendments to the Specification:**

Delete the claims to priority beginning on page 1, line 1, through page 3, line 7, and replace with the following paragraph:

This application is a continuation-in-part of U.S. Serial No. 08/884,529 filed June 27, 1997, which is a continuation-in-part of U.S. Serial No. 08/763,679 filed December 11, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/759,727 filed December 6, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/759,722 (now U.S. Pat. No. 5,720,219) filed December 6, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/759,723 filed December 6, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/759,724 filed December 6, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,622 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,623 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,624 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,625 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,626 (now U.S. Pat. No. 5,802,964) filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,658 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,627 (now U.S. Pat. No. 5,720,218) filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/681,628 filed July 29, 1996; and which also is a continuation-in-part of U.S. Serial No. 08/647,066 (now U.S. Pat. No. 5,655,441) filed May 9, 1996.

At Page 10, after Line 17 amend the heading as follows:

**BRIEF DESCRIPTION OF THE DRAWINGS: (FIGURES 1—3)**

At Page 15, after Line 11 delete heading as follows:

**~~BRIEF DESCRIPTION OF THE DRAWING (FIGURES 7—11a)~~**

At Page 19, after Line 12 delete the heading as follows:

~~BRIEF DESCRIPTION OF THE DRAWING (FIGURES 12—13)~~

At Page 22, after Line 17 delete the heading as follows:

~~BRIEF DESCRIPTION OF THE DRAWING (FIGURES 14—17)~~

At page 11, after line 1 insert the following:

FIGURE 4 shows a partial side view of the machine, partially in cross-section, displaying details of the device;

FIGURE 5 illustrates a plan view of the device installed on the machine;

FIGURE 6 illustrates the perforating filter;

FIGURE 7 illustrates the top view detailing the device in question together with the cutting, pressing and juice extraction mechanism;

FIGURE 8 illustrates a cross-sectional side view and top view of the juice collector;

FIGURE 9 illustrates on a larger scale the support of the perforating filter;

FIGURE 10 illustrates the perforating tube's piston;

FIGURE 11 illustrates the cross-section of the perforating filtering tube;

FIGURE 12 shows the tube in a cross-sectional view and a side view;

FIGURE 13 shows the tube perspective;

FIGURE 14 shows in a plan, the external shape of one of the radially cut and concave hemispheres;

FIGURE 15 shows a cross-section of the internal part of one of the radially cut and concave hemispheres;

FIGURE 16 shows the two radially cut and concave hemispheres in the operating position; and

FIGURES 15 and 17 illustrate cut B-B and a cut A-A of FIGURE 14.

## REMARKS

Claims 1-5 and 7 are pending in this application. In the Final office action mailed 03/30/1999, the Examiner allowed claims 1-3. To advance this application to issue, Applicant provides a Terminal Disclaimer to overcome the rejection of claims 4, 5, and 7. To advance this application to issue, Applicant has not made any amendments to the claims. It is noted that claims 1-4 were last amended in the Response filed 02/13/1999 by the former attorney, Mr. George Bode.

Claims 5 and 7 are the claims as originally filed.

### *Correction of Priority Claims*

The present attorney has noticed what appears to be an improper claim to priority to previous applications, and has provided, for consideration, an amendment to the specification to present a proper claim to priority. Applicant had filed a number of applications, each claiming priority under 35 U.S.C. § 119 to a respective application filed in Brazil. However, the former attorney for Applicant, Mr. George Bode, had stated that U.S. application number 08/884,529, filed June 27, 1997, claimed priority under 35 U.S.C. § 119 to 16 of these Brazilian applications. Because some of these Brazilian applications have filing dates more than one year before June 27, 1997, and because a number of other U.S. applications that were in fact co-pending and claimed priority to these earlier Brazilian applications could properly be shown in the priority claim, the present amendment is made to include these other, intervening U.S. applications.

It is believed that such amendment to priority claim is proper under the pre-September 20, 2000 changes to 37 CFR 1.78 (effective November 29, 2000). A newly executed Supplemental Declaration by the inventor is provided. The Supplemental Declaration makes proper claims to priority to prior co-pending U.S. patent applications in accordance with 35 U.S.C. § 120, and to corresponding Brazilian patent applications in accordance with 35 U.S.C. § 119. No new matter is added to this application by this amendment. Entry of this Supplemental Declaration is respectfully requested.



### **Objection to Specification**

The Examiner has objected to the amendments to the specification adding four separate headings for "Brief Description of the Drawing . . ." provided in the Response mailed February 13, 1999 by the former attorney of record. Assuming that these amendments were entered by the Examiner, Applicant herein amends the specification to remove these headings by deletion. In the alternative, Applicant respectfully requests that these amendments to delete are ignored if, in fact, the Examiner never entered the amendments that were provided in the Response mailed February 13, 1999.

To further address the objection, Applicant also herein amends the specification to provide all brief descriptions of the drawings in a single location, below an amended heading (at page 10, line 17). These descriptions are taken from the original specification and moved to a single location as shown herein. The descriptions throughout the specification are also left where originally provided to avoid unnecessary amendments to remove these, and to maintain continuity in the specification. No new matter is added with these amendments.

### **Claim Rejections - Double Patenting**

In the 03/30/1999 Final office action the Examiner rejected claims 4, 5 and 7 under the judicially created doctrine of nonstatutory double patenting.

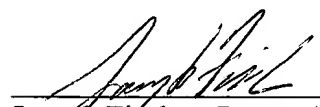
Applicant provides a Terminal Disclaimer to overcome the Examiner's rejection of claims 4, 5, and 7 in view of claims 1-3 of U.S. 5,720,218. The "conflicting" referenced patent, U.S. 5,720,218, is commonly owned with the present application.

\* \* \* \* \*

All claims having either been placed in condition for allowance or cancelled, expedited passage of this case to issuance is respectfully solicited.

**In view of the complexity of priority and the importance of this application to the client, the undersigned offers to participate in a telephonic or an in-person interview with the Examiner to clarify any issues in order to advance this application to issue.**

Respectfully submitted,

 11/7/2004  
Joseph Fischer, Patent Attorney  
Registration No. 51,210  
(Customer No. 29,847)  
Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. Orange Avenue, Suite 2500  
Orlando, FL 32801  
Telephone: 407-926-7727  
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NOV 09 2004

PTO/SB/21 (02-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Application Number	09/028,187
Filing Date	02/23/1998
First Named Inventor	Carlos Neto Mendes
Art Unit	3721
Examiner Name	S.F. Gerrity
Attorney Docket Number	10646-007-U17

Total Number of Pages in This Submission

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**OFFICE OF PETITIONS****ENCLOSURES (Check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input checked="" type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input checked="" type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	1. Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	2. New Supplemental Declaration of Inventorship w/Sched. A
<input type="checkbox"/> Certified Copy of Priority Document(s)		3. Additional sheets containing statements establishing unintentional delay
<input type="checkbox"/> Response to Missing Parts/Incomplete Application		4. Appendices A-D Supporting the Additional Sheets
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

**Remarks**

A new Supplemental Declaration of Inventorship is provided for the After Final Reply.

Also, Appendix C contains a Declaration pertaining to the Petition to Revive an Unintentionally Abandoned Application.

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Joseph Fischer (Reg. No. 51,210)
Signature	Beusser Brownlee, Wolter, Mora & Maire, P.A.
Date	November 4, 2004

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

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Signature	Grayce A. Lichtenberger
Date	November 4, 2004

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**FEE TRANSMITTAL**  
**for FY 2005**

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$ **740.00**)**Complete if Known**

Application Number	09/028,187
Filing Date	02/23/1998
First Named Inventor	Carlos Neto Mendes
Examiner Name	S.F. Gerrity
Art Unit	3721
Attorney Docket No.	10646-007-U17

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NOV 12 2004

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Account  
Number  
Deposit  
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Name

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments☐ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
<b>SUBTOTAL (1)</b>					<b>(\$ 0.00)</b>

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

		Extra Claims		Fee from below		Fee Paid	
Total Claims		-20** =		X			
Independent Claims		-3** =		X			
Multiple Dependent							

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	88	2201	44	Independent claims in excess of 3	
1203	300	2203	150	Multiple dependent claim, if not paid	
1204	88	2204	44	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
<b>SUBTOTAL (2)</b>					<b>(\$ 0.00)</b>

\*\*or number previously paid, if greater; For Reissues, see above

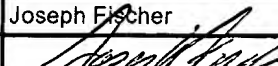
**FEE CALCULATION** (continued)**3. ADDITIONAL FEES**

Large Entity | Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	\$685.00
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify) Terminal Disclaimer Fee					\$55.00
*Reduced by Basic Filing Fee Paid					
<b>SUBTOTAL (3)</b>					<b>(\$ 740.00)</b>

**SUBMITTED BY**

(Complete (if applicable))

Name (Print/Type)	Joseph Fischer	Registration No. (Attorney/Agent)	51,210	Telephone	(407) 926-7727
Signature		Date	November 4, 2004		

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